



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

01/16/2018

MEMORANDUM

SUBJECT: Indoor Air Sampling Results at Grenada Stamping (January and March 2018)

FROM: Steve Spurlin, EPA On-Scene Coordinator

THRU: David Nunn, Eastman & Smith LTD, Attorney for Ice Industries

TO: Workers at Grenada Stamping

On December 29, 2017, a treatment system intended to reduce elevated levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under an EPA removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling to date shows the system is effective at reducing TCE to below risk levels.

Indoor air samples are being collected using Radiello® samplers at three locations over a specified duration (seven days in January, and 28 days between February and March). Samples were collected at three locations, including two locations where workers among the sensitive population work (B6 and B9), and one location where workers among the non-sensitive population work (B3). The locations selected are those where employees most frequently conduct work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

Results from January and March 2018 sampling were all below the removal management levels (RMLs) for sensitive and non-sensitive populations. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML by itself does not imply that adverse health effects will occur. The data show that the system helps lower the indoor air concentrations inside the Facility.

Table 1: Summary of TCE Concentrations in Indoor Air inside of Manufacturing Building

Sample Duration	Sampling Date	RML for Sensitive/ Non-Sensitive Populations	Concentrations Detected		
			B-3	B-6	B-9
7-day	1/11-1/18/2018	8.8/26	2.2	2.0	2.8
28-day	2/6-3/6/2018	8.8/26	1.9	7.0	1.7

EPA will continue to oversee the treatment system. The party operating the system is required to conduct periodic indoor air sampling and sampling of the system to ensure the system is performing properly, and that workers and the surrounding community are protected while the system operates.

EPA, in consultation with the Mississippi Department of Environmental Quality, proposed the Rockwell Grenada site to the Superfund National Priorities List (NPL) in January 2018 to comprehensively address contamination at the Grenada Stamping facility and in the surrounding community. More information is posted online at: www.epa.gov/superfund/rockwell-intl-wheel. If you have questions or need additional information from the EPA, please contact me at (731) 394-8996.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER

61 FORSYTH STREET

ATLANTA, GEORGIA 30303-8960

JAN 19 2018

MEMORANDUM

SUBJECT: Indoor Air Sampling Results at Grenada Stamping (**March and May 2018**)

FROM: Steve Spurlin, EPA On-Scene Coordinator 

THRU: David Nunn, Eastman & Smith LTD, Attorney for Ice Industries

TO: Workers at Grenada Stamping

On December 29, 2017, a treatment system to reduce elevated levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under an EPA removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling to date continues to show the system is effective at reducing TCE to below risk levels.

Indoor air samples are being collected using Radiello® samplers at three locations over a specified duration. Samples are collected at three locations, including two locations where workers among the sensitive population work (B6 and B9), and one location where workers among the non-sensitive population work (B3). The locations selected are those where employees most frequently conduct work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

Results from sampling since the system was restarted have all been below the removal management levels (RMLs) for sensitive and non-sensitive populations. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML by itself does not imply that adverse health effects will occur. The data show that the system helps lower the indoor air concentrations inside the Facility. The results from the most recent sampling in March through May 2018 are summarized below.

Table 1: Summary of TCE Concentrations in Indoor Air inside of Manufacturing Building

Sample Duration	Sampling Date	RML for Sensitive/ Non-Sensitive Populations	Concentrations Detected		
			B-3	B-6	B-9
29-days	3/6-4/3/2018	8.8/26ug/m3	2.0ug/m3	4.7ug/m3	1.7ug/m3
28-days	4/3-5/1/2018	8.8/26ug/m3	1.6ug/m3	4.7ug/m3	1.5ug/m3

EPA will continue to oversee the treatment system. The party operating the system is required to conduct periodic indoor air sampling and sampling of the system to ensure the system is performing properly, and that workers and the surrounding community are protected while the system operates.


EPA, in consultation with the Mississippi Department of Environmental Quality, proposed the Rockwell Grenada site to the Superfund National Priorities List (NPL) in January 2018 to comprehensively address contamination at the Grenada Stamping facility and in the surrounding community. More information is posted online at: www.epa.gov/superfund/rockwell-intl-wheel. If you have questions or need additional information from the EPA, please contact me at (731) 394-8996.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

11 12 2018

MEMORANDUM

SUBJECT: Indoor Air Sampling Results at Grenada Stamping (May 2018)
FROM: Steve Spurlin, EPA On-Scene Coordinator 
THRU: David Nunn, Eastman & Smith LTD, Attorney for Ice Industries
TO: Workers at Grenada Stamping

On December 29, 2017, a treatment system to reduce elevated levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under an EPA removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling to date continues to show the system is effective at reducing TCE to below risk levels.

Indoor air samples are being collected using Radiello® samplers at three locations over a specified duration. Samples are collected at three locations, including two locations where workers among the sensitive population work (B6 and B9), and one location where workers among the non-sensitive population work (B3). The locations selected are those where employees most frequently conduct work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

Results from sampling since the system was restarted have all been below the removal management levels (RMLs) for sensitive and non-sensitive populations. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML by itself does not imply that adverse health effects will occur. The data show that the system helps lower the indoor air concentrations inside the Facility. The results from the most recent sampling in May 2018 is summarized below.

Table 1: Summary of TCE Concentrations in Indoor Air inside the Manufacturing Building

Sample Duration	Sampling Date	RML for Sensitive/ Non-Sensitive Populations	Concentrations Detected		
			B-3	B-6	B-9
28-days	5/1-5/29/2018	8.8/26ug/m3	2.0ug/m3	4.8ug/m3	0.73ug/m3

EPA will continue to oversee the treatment system. The party operating the system is required to conduct periodic indoor air sampling and sampling of the system to ensure the system is performing properly, and that workers and the surrounding community are protected while the system operates.

EPA, in consultation with the Mississippi Department of Environmental Quality, proposed the Rockwell Grenada site to the Superfund National Priorities List (NPL) in January 2018 to comprehensively address contamination at the Grenada Stamping facility and in the surrounding community. More information is posted online at: www.epa.gov/superfund/rockwell-intl-wheel. If you have questions or need additional information from the EPA, please contact me at (731) 394-8996.



U. S. Environmental Protection Agency – Region 4
Upcoming Sampling Events in the Eastern Heights Subdivision
Rockwell International Wheel & Trim Site, Grenada, Mississippi

JUNE 11 – 22 & Tentatively JULY 9 -20, 2018

EPA will continue to conduct sampling in the Eastern Heights community between June 11 – 22 and tentatively July 9 - 20, 2018. In June, EPA will sample groundwater, soil gas and outdoor air. In July, EPA plans to sample outdoor air, indoor air and air under the foundations of homes located over the TCE-contaminated groundwater plume. EPA will ask property owners for permission before testing their property. Both sampling events are part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine where any cleanup activity may be needed.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the Site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.

May 24, 2018



U. S. Environmental Protection Agency – Region 4
Upcoming Sampling Event in the Eastern Heights Subdivision
Rockwell International Wheel & Trim Site, Grenada, Mississippi

During the dates of October 2-11, 2018, the United States Environmental Protection Agency (EPA) will conduct soil and groundwater sampling around the perimeter of Eastern Heights and outdoor air sampling within Eastern Heights. Samples of soil and groundwater will be taken from the surface down to the bottom of the aquifer (approximately 60 feet down). This sampling event is part of the Remedial Investigation (RI) for the Rockwell International Wheel & Trim Site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine future cleanup activities.

The Rockwell International Wheel & Trim Site was proposed to the Superfund National Priorities List (NPL) on January 18, 2018, and finalized on September 13, 2018. Adding the Site to the NPL will advance a comprehensive cleanup to address all contamination from former operations at the facility, in Eastern Heights and in other surrounding areas.

If you have any questions, please contact Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 11 2018

OVERNIGHT MAIL
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY

Ted. B. Lyon, Jr.
Marquette W. Wolf
18601 Lyndon B. Johnson Freeway, Suite 525
Town East Tower
Mesquite, TX 75150

Re: Rockwell International Wheel and Trim Proposed Superfund Site (aka Grenada Manufacturing, LLC facility), Grenada, Mississippi

Mr. Wolf and Mr. Lyon:

This letter is to follow-up with you regarding the email that I sent to representatives of your firm, Ted Lyon (tblyon@tedlyon.com), Marquette Wolf (mwolf@tedlyon.com), and Lorrie McKeever (Lorrie@tedlyon.com), on Friday, June 8, 2018. I have not received a response to my email, therefore I reiterate the content of that email below and request that you respond by Wednesday, June 13, 2018 as requested.

The United States Environmental Protection Agency is investigating the release or threat of release of hazardous substances, pollutants, or contaminants at the Rockwell International Wheel and Trim Proposed Superfund Site in Grenada, Mississippi (Site). As the EPA has communicated at recent public meetings, and specifically advised you by email on May 15, 2018, the Agency has been preparing to perform additional indoor and sub-slab air sampling in the Eastern Heights neighborhood.

For those residents that you represent, the EPA would gladly coordinate through you to get the necessary sampling access agreements signed, but we were unable to do so until you provided us with a current list of the clients that you represent in the Eastern Heights neighborhood. The EPA had requested this information from you in the past, and again requested it by phone and email on May 17, 2018 (via telephone conversation and email between Stephen Smith and Ted Lyon). On June 5, 2018, I spoke with Lorrie McKeever in your office and again reiterated that without the requested client information, we are unable to identify those individuals represented by you or coordinate signature of access agreements through you. As of June 5, 2018, the EPA had already received access from a significant number of residents, and only a small subset of the residents had communicated to the EPA that they are represented and wanted to discuss the access agreement with their counsel prior to signing. Another portion of the residents had not yet responded to the access agreement and information left by

the EPA at their homes. After my discussion with Lori McKeever on June 5, 2018, she sent an email at 3:09 pm enclosing the current list of your clients in Eastern Heights. On June 6, 2018, at 1:57 pm, Ms. McKeever sent another email "revoking" "any access authorizations executed by [y]our clients in Eastern Heights for testing" and specifically listed resident names and addresses for eight properties.

During the EPA's September 2015 and 2016 Vapor Intrusion (VI) studies in the Eastern Heights subdivision, TCE was detected in the ambient air at levels below, but near, the indoor air action levels for TCE (2 ug/m^3). TCE was detected, but at lower levels, in the ambient air near the subdivision during the VI study conducted in May 2016. Additional ambient air and fence-line monitoring were conducted at the Rockwell International Wheel and Trim Facility (Facility) between July and November 2017, and TCE was detected above the detection limits in many samples, but again below the indoor air action levels. Based on these results, the EPA technical team recommended a comprehensive ambient air study be conducted starting in May 2018 and continuing into the warmer summer months to try to determine the source of the TCE in the ambient air near the neighborhood. Fence-line sampling results at the Facility performed between March 6 and April 2, 2018, are below the indoor air screening level of 0.21 ug/m^3 and indicate no elevated risk to the community. The outdoor (ambient) air is compared against the indoor air levels because it is considered more protective. Because the chances of increased volatility of a chemical like TCE in the warmer months, having this ambient air study done over the summer months is needed to confirm if there are any consistent ambient air concentrations that could possibly impact the Eastern Heights subdivision. Without this data, the potential risks cannot be fully evaluated.

Therefore, pursuant to the EPA's mandate to protect human health and the environment, the EPA requests your assistance in coordinating access with your clients to conduct sampling activities including, but not limited to, drilling groundwater sampling wells, sampling of groundwater, surface soil, subsurface soil, sediment, surface water, sub-slab air, indoor air and outdoor air. Please find below a list of addresses of residents whom you represent that the EPA would like to include in the current sampling plan.

98 Lyon Drive, Grenada, MS 38901
100 Lyon Drive, Grenada, MS 38901
101 Lyon Drive, Grenada, MS 38901
102 Lyon Drive, Grenada, MS 38901
103 Lyon Drive, Grenada, MS 38901
104 Lyon Drive, Grenada, MS 38901
105 Lyon Drive, Grenada, MS 38901
106 Lyon Drive, Grenada, MS 38901
108 Lyon Drive, Grenada, MS 38901
110 Lyon Drive, Grenada, MS 38901
112 Lyon Drive, Grenada, MS 38901
114 Lyon Drive, Grenada, MS 38901
126 Lyon Drive, Grenada, MS 38901
127 Lyon Drive, Grenada, MS 38901
133 Lyon Drive, Grenada, MS 38901
144 Lyon Drive, Grenada, MS 38901
146 Lyon Drive, Grenada, MS 38901
148 Lyon Drive, Grenada, MS 38901
152 Lyon Drive, Grenada, MS 38901
158 Lyon Drive, Grenada, MS 38901

166 Lyon Drive, Grenada, MS 38901
194 Lyon Drive, Grenada, MS 38901
206 Lyon Drive, Grenada, MS 38901
208 Lyon Drive, Grenada, MS 38901
210 Lyon Drive, Grenada, MS 38901
212 Lyon Drive, Grenada, MS 38901
109 Tallahoma Drive, Grenada, MS 38901
113 Tallahoma Drive, Grenada, MS 38901
139 Tallahoma Drive, Grenada, MS 38901
145 Tallahoma Drive, Grenada, MS 38901
151 Tallahoma Drive, Grenada, MS 38901
153 Tallahoma Drive, Grenada, MS 38901
155 Tallahoma Circle, Grenada, MS 38901
116 Rockwell Circle, Grenada, MS 38901
118 Rockwell Circle, Grenada, MS 38901
120 Rockwell Circle, Grenada, MS 38901
122 Rockwell Circle, Grenada, MS 38901
124 Rockwell Circle, Grenada, MS 38901
138 Pittsburg Circle, Grenada, MS 38901, and
the Playground located in the middle of Tallahoma Circle.

The Access Authorization that the EPA requests be signed by your clients for the addresses listed above is attached to this email. Sampling in and around the residences for assessment of potential Vapor Intrusion will include additional investigative activities including, but not limited to, the following tasks: 1) sub-slab vapor sampling, including the installation or reinstallation of sampling ports into the slab or basement floor; 2) air sampling via hose connected to the Trace Atmospheric Gas Analyzer mobile laboratory and summa canister; 3) assessment, inventory and removal of certain household containers (replaced upon completion of all sampling activities); and 4) assessment of the residential structure. Representatives may include contractors and/or subcontractors hired by the EPA, other federal and state agencies, and their agents. The EPA and/or its representatives would be entering upon the properties to perform the identified activities at reasonable times as mutually scheduled with the resident/homeowner.

The EPA requests access beginning on June 18, 2018 for the start of the June 2018 sampling event scheduled by the EPA. The grant of access will be effective for the duration of the data sampling and remedial activities. The EPA anticipates that remedial activities will commence on June 18, 2018 and requests for access to be effective until remedial activities are complete. However, actual start and completion dates cannot be predicted with certainty and are subject to schedule conflicts and unforeseen circumstances. Since time is short, please discuss with your clients the need to have signed Access Authorizations returned to the EPA as soon as possible, but no later than June 13, 2018. Without signed Access Authorizations, the EPA will be delayed in performing the full scope of the scheduled sampling event necessary to continue to monitor and evaluate any potential risks of exposure to the residents.

Pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Public Law 99-499), the EPA has the express authority to acquire access to property affected by hazardous substances and to conduct the planned sampling activities. If a request for access is denied, an administrative order directing compliance with the request may be

issued, civil action to compel compliance may be initiated, or access may be sought by any other lawful means.

If you should have any legal questions for the EPA, please contact me at (404) 562-9700. If you have any technical questions regarding sampling and remedial activities at the Site, please contact Shelby Johnston, Remedial Project Manager, at (404) 562-8287. Your immediate assistance and cooperation in securing the necessary access authorizations is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan E. Hansen".

Susan E. Hansen
Chief, Office of RCRA/CERCLA Legal Support

Enclosure: Access Authorization

U.S. Environmental Protection Agency Rockwell International Wheel & Trim Grenada, Mississippi



Superfund Fact Sheet 1

January 2018

Public Meeting

Tuesday, February 6, 2018

6:00 p.m. to 8:00 p.m.

*Lewis Johnson Senior Citizen
Complex*

*299 Dr. Martin Luther King Jr. Blvd
Grenada, MS*

Introduction

In consultation with the Mississippi Department of Environmental Quality (MDEQ), the U.S. Environmental Protection Agency proposed the Rockwell International Wheel & Trim site ("Rockwell Grenada," also commonly known as Grenada Manufacturing LLC) in Grenada, Mississippi, to the Superfund program National Priorities List (NPL). EPA will hold a public meeting to present an overview of the Superfund cleanup program and answer questions on Tuesday, February 6, 2018, from 6 to 8 p.m. in Grenada. Representatives from MDEQ will participate. EPA is also soliciting public comments on the proposed listing for 60 days ending on March 19, 2018.

This fact sheet provides an overview of the Superfund process, how to submit public comments, a site description, history and current/future activities.

Proposal to the Superfund National Priorities List

Superfund, as established by Congress in 1980, investigates and cleans up hazardous waste sites. EPA adds sites to the NPL when contamination threatens human health and the environment. EPA deletes sites once all response actions are complete and all cleanup goals have been achieved. EPA typically initiates Superfund involvement because states, tribes or citizens ask for the Agency's help. The Agency may also find contamination during its own investigations.

EPA has been overseeing the cleanup of the Rockwell Grenada site under the Resource Conservation and Recovery Act (RCRA) program. EPA's priority is a comprehensive approach that addresses all contamination related to the former chrome plating operation at the facility and in the surrounding community. Adding the site to the NPL will allow EPA to conduct a comprehensive assessment of all the risks to public health and the environment, and take the necessary cleanup actions. Only sites added to the NPL are eligible to receive federal funding for long-term cleanup.

Public Comment

Information that EPA used to support the NPL proposal is available for public review and comment. EPA will consider public comments before making a final decision about adding the site to the NPL. Materials compiled by the EPA to propose the Rockwell Grenada site to the NPL can be obtained in several ways:

1. Online at www.regulations.gov. In the search bar, type in the docket number for the Rockwell Grenada site: EPA-HQ-OLEM-2017-0608.

We want to hear from you!

The public comment period for the proposed NPL listing is
January 18 to March 19, 2018.

Follow the instruction on p. 2 to
submit your comments.

Site History

Rockwell International, followed by Textron Automotive and later by Grenada Manufacturing, operated a wheel cover manufacturing and chrome plating facility on the property from 1966 to the early 2000s. In 2005, portions of the plant were leased to Ice Industries, which converted the facility to a metal stamping plant known as Grenada Stamping that continues to operate today.

Past operations, spills, and waste handling practices resulted in groundwater, surface water and soil contamination. The solvent trichloroethene (TCE) and related contaminants have been found in the air inside the manufacturing building, groundwater, former disposal areas associated with the facility, nearby wetlands and Riverdale Creek.

Current and Future Activities

On December 29, 2017, a treatment system intended to reduce elevated levels of TCE inside the manufacturing building at the Grenada Stamping facility was restarted under an EPA removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. People who work inside the manufacturing facility have been notified about the air contamination and the steps being taken to remove contaminants.

The treatment system will operate with EPA oversight and monitoring. EPA will require the Facility to submit a sampling plan for the system in order to ensure the system is performing properly and that workers and the surrounding community are protected while the system operates. EPA continues to work with the MDEQ and the Facility to identify long-term measures to reduce and eventually eliminate the source of TCE contamination beneath the Facility.

3

CONTACTS

EPA Community Involvement Coordinator

Abena Ajanaku
404-562-8834
ajanaku.abena@epa.gov

EPA Remedial Project Manager

Shelby Johnston
(404) 562-8287
johnson.shelby@epa.gov

EPA National Priorities List Coordinator

Cathy Amoroso
404-562-8637
amoroso.cathy@epa.gov

FOR MORE INFORMATION

Websites

<https://www.epa.gov/superfund/rockwell-intl-wheel>
www.epa.gov/grenadacleanup

Information Repositories

Elizabeth Jones Library
1050 Fairfield Avenue
Grenada, MS 38902

Records Center, U. S. EPA
Sam Nunn Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

**U.S. Environmental Protection Agency
Rockwell International
Wheel & Trim
Grenada, Mississippi**



Superfund Fact Sheet #2

May 2018

**Public Availability
Session**

Tuesday, May 15, 2018

Drop in anytime

12:00 to 3:00 p.m.

or

5:00 to 8:00 p.m.

Grenada City Auditorium

17 N. Main Street

Grenada, MS

Introduction

The U.S. Environmental Protection Agency (EPA) invites the public to two availability sessions on May 15, 2018, to learn about upcoming sampling activities in the Eastern Heights neighborhood that will occur during the same week and continue later this summer. During the public availability sessions, representatives from EPA and the Mississippi Department of Environmental Quality will be available to discuss the planned sampling and answer questions. Residents may come anytime between 12:00 to 3:00 p.m., or between 5:00 to 8:00 p.m.

This fact sheet also describes the remedial investigation process and includes a map of the site study area, which was created in response to feedback received during the last public meeting.

Lastly, the fact sheet also presents results from the most recent sampling since treatment to address elevated levels of trichloroethene (TCE) in indoor air resumed at Grenada Stamping. The results show the system is effectively reducing concentrations of TCE in the air inside the manufacturing building to levels protective of on-site workers. Air monitoring at the fence line between the facility property and the Eastern Heights neighborhood show that emissions from the system are not increasing TCE concentrations in the community.

Environmental Sampling in Eastern Heights

From May 16-18, EPA will test outdoor air in and around the neighborhood for trichloroethene (TCE). The data will inform future sampling planned for July 2018 of indoor air and air under the foundations of homes located over the TCE-contaminated groundwater plume. EPA will ask property owners for permission before testing their property. The sampling plan, including a map of locations EPA is proposing to sample, is posted on EPA's website.

Results from previous sampling performed in the neighborhood between 2015-2016 showed no immediate threat to public health due to TCE. Though groundwater in the southern portion of Eastern Heights is contaminated with TCE, it is not a source of drinking water and EPA found no evidence of contaminated vapors above risk-based levels in the community. This new round of sampling will help determine whether contamination has spread or conditions have changed. Actions will be taken immediately if any unacceptable risks to human health are discovered.

Update on Treatment at Grenada Stamping

On December 29, 2017, a treatment system to reduce elevated levels of TCE in the air inside the manufacturing building at Grenada Stamping was restarted under EPA oversight. The system is being monitored to ensure that it is performing properly and that workers and the surrounding community are protected while the system operates.

Sampling to date shows the system is effective at reducing TCE to levels that are protective of on-site workers. People who work inside the building have been notified about the steps taken to reduce contaminants. A memo to workers detailing the most recent sampling results is posted on EPA's website.

Additional sampling to date along the north fence line between the facility and the Eastern Heights neighborhood show that emissions from the system are not increasing TCE concentrations in the community. TCE concentrations from the most recent sampling performed between March 6 and April 3, 2018, ranged from non-detect to 0.038 ug/m³ (micrograms per cubic meter). There is no screening level for outdoor air, however, this is below EPA's screening level for residential indoor air of 0.21 ug/m³. The indoor air screening level is used because it is considered more protective.

EPA also oversaw two air modeling studies to determine whether stack emissions from the treatment system could increase TCE levels in the community above concentrations that would pose health risks. The first used the average TCE stack concentration, and the second used the highest TCE stack concentration detected to date. The resulting estimated TCE concentrations under both scenarios at the facility fence line were protective of the surrounding community.

The treatment system will continue to operate with EPA oversight until long-term measures to reduce and eventually eliminate the source of TCE contamination beneath the facility are taken.

CONTACTS

EPA Community Involvement Coordinator

Abena Ajanaku
404-562-8834
ajanaku.abena@epa.gov

EPA Remedial Project Manager

Shelby Johnston
(404) 562-8287
johnston.shelby@epa.gov

FOR MORE INFORMATION

Websites

<https://www.epa.gov/superfund/rockwell-intl-wheel>
www.epa.gov/grenadacleanup

Information Repositories

Elizabeth Jones Library
1050 Fairfield Avenue
Grenada, MS 38902

Records Center, U. S. EPA
Sam Nunn Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303

U.S. Environmental Protection Agency

Rockwell International

Wheel & Trim

Grenada, Mississippi



Information for Workers at Grenada Stamping

Superfund Fact Sheet #3

July 2018

Introduction

On December 29, 2017, a treatment system to reduce high levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under a U.S. Environmental Protection Agency removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling in June 2018 showed an elevated level of trichloroethene (TCE) in the Facility's indoor air at one location. A separated extraction line was discovered and repaired on June 5, 2018, that likely caused the elevation. The EPA directed the operator to conduct additional indoor air sampling at the same location beginning July 16, 2018, and the results were all below levels that would pose an immediate health risk. EPA is providing this fact sheet to people who work inside the building to notify them of the results and steps taken to reduce the elevated TCE concentration inside the building.

More information about EPA's work to oversee cleanup of the site: www.epa.gov/superfund/rockwell-intl-wheel.

June and July 2018 Sampling

Indoor air samples are being collected, using Radiello® samplers, at three locations over a specified duration. The three locations include two areas where workers among the sensitive population work (B6 and B9), and an area where workers among the non-sensitive population work (B3). The locations selected are where employees frequently work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

On July 12, 2018, EPA was notified by the party operating the treatment system that preliminary data for sample location B9 was 26 micrograms per cubic meter (ug/m3) for TCE. The result exceeds the TCE removal management level (RML) for sensitive populations of 8.8 ug/m3. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML, by itself does, not imply that adverse health effects will occur. Results for locations B3 and B6 were below the RML.

The operator of the treatment system believes the elevated level at location B9 is attributable to a separated extraction line near the B9 location that was discovered and repaired on June 5, 2018. EPA directed the operator to conduct two rounds of 24-hour indoor air sampling beginning July 16, 2018, at the B-9 location with an expedited turnaround time from the laboratory. The samples were analyzed quickly to ensure the TCE concentration had returned to levels below the RML. The results for samples collected on July 16 and July 17, 2018, are below the RML (0.68 ug/m3 and 1.0 ug/m3, respectively) and no additional response actions are required.

Prior to the June 2018 samples, the results from sampling since the system was restarted have all been below the removal management levels (RMLs) for sensitive and non-sensitive populations.

U.S. Environmental Protection Agency

Rockwell International

Wheel & Trim

Grenada, Mississippi

Information for Workers at Grenada Stamping



Superfund Fact Sheet #4

September 2018

Introduction

On December 29, 2017, a treatment system to reduce high levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under a U.S. Environmental Protection Agency removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling to date continues to show the system is effective at reducing TCE to below risk levels.

June and July 2018 Sampling

Indoor air samples are being collected, using Radiello® samplers, at three locations over a specified duration. The three locations include two areas where workers among the sensitive population work (B6 and B9), and an area where workers among the non-sensitive population work (B3). The locations selected are where employees frequently work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

Except for the June 2018 exceedance at one location (B-9), where an extraction pipe became separated and was repaired, results from sampling since the system was restarted have all been below the removal management levels (RMLs) for sensitive and non-sensitive populations. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML by itself does not imply that adverse health effects will occur. The data show that the system helps lower the indoor air concentrations inside the facility. The results from the most recent sampling is summarized on page 2.

Worker Health

If you have health questions, you may want to consult your doctor. The Agency for Toxic Substances and Disease Registry (ATSDR) has TCE exposure information available for you and your doctors upon request. The materials explain how you can be exposed to TCE and how it may affect your health. For more information, contact:

Mississippi Poison Control Center: (601) 984-5577 or (800) 222-1222

Leann Bing, ATSDR: (404) 562-1784 or KBing@cdc.gov

Occupational Safety and Health Administration: (601)965-4606 or www.osha.gov/workers/file_complaint.html

Dr. Paul Byers, Mississippi State Department of Health: (601) 576-7725

U.S. Environmental Protection Agency

Rockwell International

Wheel & Trim

Grenada, Mississippi

Information for Workers at Grenada Stamping



Superfund Fact Sheet #5

October 2018

Introduction

On December 29, 2017, a treatment system to reduce high levels of trichloroethene (TCE) inside the manufacturing building at Grenada Stamping was restarted under a U.S. Environmental Protection Agency removal action. Removal actions are short-term responses intended to protect people from risks or potential risks associated with contaminated sites. Sampling to date continues to show the system is effective at reducing TCE to below risk levels.

July through August 2018 Sampling

Indoor air samples are being collected, using Radiello® samplers, at three locations over a specified duration. The three locations include two areas where workers among the sensitive population work (B6 and B9), and an area where workers among the non-sensitive population work (B3). The locations selected are where employees frequently work and where elevated concentrations of TCE were previously detected (before the treatment system was put in place).

Except for the June 2018 exceedance at one location (B-9), where an extraction pipe became separated and was repaired, results from sampling since the system was restarted have all been below the removal management levels (RMLs) for sensitive and non-sensitive populations. RMLs are used by EPA to help determine if any future actions may be needed. A sample result higher than a RML by itself does not imply that adverse health effects will occur. The data show that the system helps lower the indoor air concentrations inside the facility. The results from the July through August 2018 sampling event is summarized below:

Table 1: TCE Concentrations in Indoor Air - Manufacturing Building

Sample Duration	Sampling Date	RML for Sensitive/ Non-Sensitive Populations	Concentrations Detected		
			B-3	B-6	B-9
28-days	7/24-8/21/2018	8.8/26ug/m3	1.6 ug/m3	1.2 ug/m3	0.68 ug/m3

EPA will continue to oversee the treatment system. The party operating the system is required to conduct periodic indoor air sampling and sampling of the system to ensure the system is performing properly, and that workers and the surrounding community are protected while the system operates.

EPA, in consultation with the Mississippi Department of Environmental Quality, proposed the Rockwell Grenada site to the Superfund National Priorities List (NPL) in January 2018 to comprehensively address contamination at the Grenada Stamping facility and in the surrounding community. More information can be found online at the websites listed below.



During the week of August 13, 2018, the United States Environmental Protection Agency will continue to conduct sampling in the Eastern Heights community. EPA plans to sample ambient air (outdoor air) and groundwater. EPA will ask property owners for permission before testing their property. This sampling event is part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine future cleanup activities.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.



During the week of August 13, 2018, the United States Environmental Protection Agency will continue to conduct sampling in the Eastern Heights community. EPA plans to sample ambient air (outdoor air) and groundwater. EPA will ask property owners for permission before testing their property. This sampling event is part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine future cleanup activities.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.



During the week of August 13, 2018, the United States Environmental Protection Agency will continue to conduct sampling in the Eastern Heights community. EPA plans to sample ambient air (outdoor air) and groundwater. EPA will ask property owners for permission before testing their property. This sampling event is part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine future cleanup activities.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.



During the week of August 13, 2018, the United States Environmental Protection Agency will continue to conduct sampling in the Eastern Heights community. EPA plans to sample ambient air (outdoor air) and groundwater. EPA will ask property owners for permission before testing their property. This sampling event is part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine future cleanup activities.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834. More information about the site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.

U. S. Environmental Protection Agency – Region 4

Public Availability Sessions

Rockwell International Wheel & Trim Site, Grenada, Mississippi

SAVE THE DATE

Tuesday, May 15, 2018

12:00 p.m. to 3:00 p.m. or 5:00 p.m. to 8:00 p.m.

Grenada City Auditorium 17 N. Main St., Grenada, Mississippi

EPA is starting the remedial investigation (RI) in May 2018, beginning in the Eastern Heights neighborhood. The purpose of the RI is to fill data gaps to assess whether there are any risks posed to human health, and to identify the possible methods to clean up the contamination.

If you have any questions, please call Shelby Johnston, Remedial Project Manager, at 404-562-8287, or Abena Ajanaku, Community Involvement Coordinator, at 404-562-8834. Additional information about the Site can be found at: www.epa.gov/superfund/rockwell-intl-wheel.

May 1, 2018



U. S. Environmental Protection Agency – Region 4
Upcoming Sampling Event in the Eastern Heights Subdivision
Rockwell International Wheel & Trim Site, Grenada, Mississippi

EPA will conduct sampling in the Eastern Heights community July 8 - 14, 2018. EPA plans to sample outdoor air, indoor air and air under the foundation of several homes located over the TCE-contaminated groundwater plume. EPA will ask property owners for permission before testing their property. EPA will meet with residents whose homes will be sampled to assess their use of common household chemicals. EPA will assist with removing chemical products from the homes prior to indoor testing. This sampling event is part of the Remedial Investigation (RI) for the Rockwell Grenada site. The purpose of the RI is to collect data necessary to assess any risks to human health and the environment, which will help determine where any cleanup activity may be needed.

Outdoor air sampling results, performed May 16-17, 2018 in the community as part of the RI were all below EPA risk-based screening levels for indoor air. Detailed results will be posted at: www.epa.gov/superfund/rockwell-intl-wheel.

If you have questions, call Shelby Johnston, Remedial Project Manager, at (404) 562-8287, or Abena Ajanaku, Community Involvement Coordinator, at (404) 562-8834.

Granada Mfg Draft TCE data from their Sampling 10/2016 and 1/2017

Evaluation for Sensitive populations TCE RSL 3.0 ug/m3, RML = 8.8 ug/m3

Values for non-sensitive populations TCE RSL 3.0 ug/m3, RML = 26.0 ug/m3

Sample	TCE value ug/m3 Oct '16 / Jan '17	Above RSL	Above RML Sensitive Populations	Above RML Non- sensitive Populations
Basement Area				
BS1	2.3 / 13	N / Y	Not Regularly Occupied	Not Regularly Occupied
BS2	3.3 / 14	Y / Y		
Indoor Air Area A, small offices				
IA0A1	7.1 / 6.6	Y / Y	N / N	N / N
IA0A2	7.1 / 7.6	Y / Y	N / N	N / N
IA0A3	7.1 / 7.5	Y / Y	N / N	N / N
IA0A4	missing			
IA0A5	6.9 / 10	Y / Y	N / Y	N / N
IA0A6	6.7 / 6.9	Y / Y	N / N	N / N
IA0A7	N/A / 7.4	N/A / Y	N/A / N	N/A / N
IA0A8	N/A / 7.4	N/A / Y	N/A / N	N/A / N
Indoor Air Area B				
IA0B1	11 / 23	Y / Y	Y / Y	N / N
IA0B2	11 / 22	Y / Y	Y / Y	N / N
IA0B3	29 / 81	Y / Y	Y / Y	Y / Y
IA0B4	13 / 12	Y / Y	Y / Y	N / N
IA0B5	12 / 12	Y / Y	Y / Y	N / N
IA0B6	6.8 / 6.5	Y / Y	N / N	N / N
IA0B7	N/A / 35	N/A / Y	N/A / Y	N/A / Y
Outside Air				
OA001	1.7 / 0.16 J	N / N	N / N	N
OA002	2.0 / 0.77	N / N	N / N	N
OA003	3.5 / 0.13 J	Y / N	N / N	N
OA004	N/A / 0.11 J	N/A / N	N/A / N	N/A / N
OA005	N/A / 0.13 J	N/A / N	N/A / N	N/A / N
OA006	N/A / N/A for TCE			
Field Blank 1	All ND / 2.9	N / N	N/A / N	N/A / N
Sub-Slab/Subsurface		Above RSL	Not Applicable	Not Applicable
SS1	3,000 / 3,000	Y / Y		
SS2	240,000 / 220,000	Y / Y		
SS3	100 / 70	N / N		
SS4	2,900,000 / 220,000	Y / Y		
SS5	74,000 / 110,000	Y / Y		
SS6	29,000 / 39,000	Y / Y		
Crawl Space -NEW			RMLs N/A	RMLs N/A
CS001	N/A / 43J	N/A / Y		
CS002	N/A / 8.7	N/A / Y		

Risk and Hazard Index worse case for each area as calculated by VISL, commercial scenario

AREA	Sample No.	Risk	Hazard Index	TIER Level
Basement Area	BS2	1.6E-06 / 4.7E-06	0.42 / 1.6	Tier 2*
Indoor Air Area A	IA0A5	4.1E-6 / 3.3E-06	0.98 / 1.1	Tier1 / 2 **
Indoor Air Area B	IA0B3	1.2E-05 / 2.7E-05	3.7 / 9.2	Tier 1
Outside Air	OA003	1.4E-06 / 2.6E-07	0.41 / .088	Tier 2
Subslab	SS4	9.7E-01 / 7.4E-02	33,000 / 25,000	N/A

*Not Occupied **Potential Risk Management Decision

Previous TCE in the building – 2004 and 2009 indoor air sampling reports routinely indicate concentrations in the B3 sample area ranging between 23 and 53 ug/m3, pg. 31 (Mar/09), pg. 32 (Aug/09), pg. 32 (Feb/03) and pg. 37 (Aug/04) respectively. Additionally, it is the same base map used in the current work plan.

Summary of indoor air data from industrial plant, Grenada Manufacturing

		2003	2004	2009	RSL - industrial
Zone A (offices, Breakrooms)	C 1,2 DCE	1.2 ppbv	0.51 ppbv		No RSL.
		4.8 ug/m3	2.04 ug/m3		
	MC	5.2 ppbv	8.5 ppbv	ND	1,200 ug/m3
		18.23 ug/m3	29.8 ug/m3		
	TCE	2.8 ppbv	1.3 ppbv		3 ug/m3
		15.19 ug/m3	7 ug/m3	15.5 ug/m3	
	Toluene	3.0 ppbv	4.2 ppbv		2.2E4 ug/m3
			15.97 ug/m3		
	PCE		0.061ppbv/		470 ug/m3
Zone B (production area)	C 1,2 DCE	.84 ppbv	1.5 ppbv		
			6 ug/m3		
	MC	10 ppbv	69 ppbv		1,2000 ug/m3
		35 ug/m3	241.97 ug/m3		
	TCE	7.9 ppbv	8.1 ppbv	9.9 ppbv	3 ug/m3
		42.85 ug/m3	43.94 ug/m3	53.7 ug/m3	

Ben Bentkowski, Scientific Support Section	1.2 ppbv/	2.2E4 ug/m3
DRAFT evaluation of Granada Mfg air data October 2016 and January 2017		February 2, 2017



Outdoor Air Sampling Stations

Arvinmeritor Grenada Manufacturing Plant



Project 108046
Client: ICE Facilities
City: Grenada, MS
County: Grenada



0 187.5 375 750 Feet

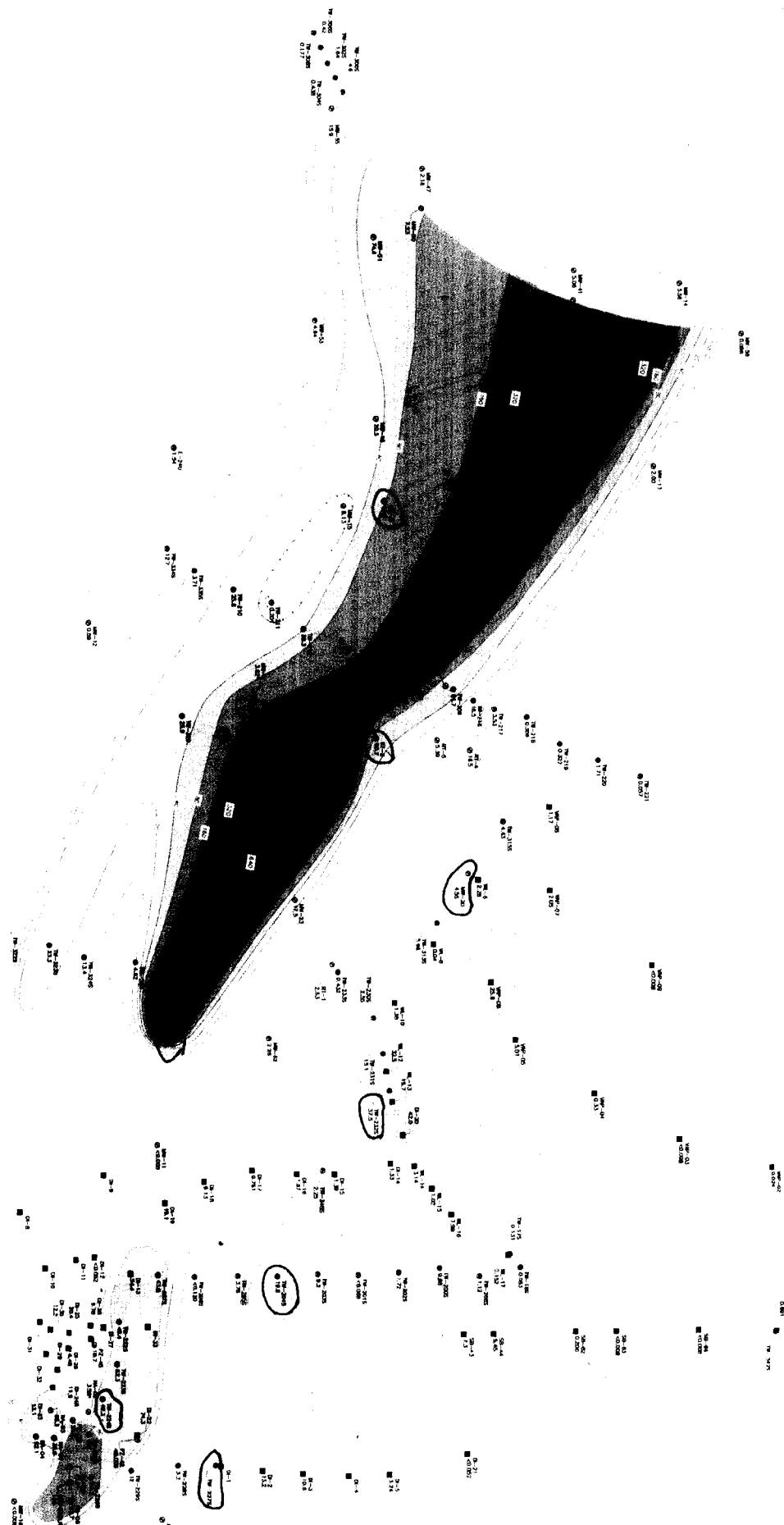
PROJECTION SYSTEM: Transverse Mercator DATUM: North American 1983

LAST UPDATED: 2/2/2017 8:38:18 AM

Legend

- | | |
|---|--------|
| 1 | OA - 1 |
| 2 | OA - 2 |
| 3 | OA - 3 |
| 4 | OA - 4 |
| 5 | OA - 5 |
| 6 | OA - 6 |

- NOTES
1. UM CONCENTRATIONS SHOWN ON THE MAP ARE FROM THE MOST RECENT YEAR AVAILABLE FOR EACH MONITORING POINT. IF MORE THAN ONE DATA POINT IS AVAILABLE FOR THE MOST RECENT YEAR, THE HIGHEST TOTAL UM CONCENTRATION SHOWN ON THIS DRAWING COMBINE THE UM CONCENTRATIONS OF TCE, DCE AND VC.
 2. THIS DRAWING IS NOT USED TO SHOW MC, EXCEEDANCES OF INDIVIDUAL COMPOUNDS (TCE, DCE AND VC) OR TO SHOW EXCEEDANCES OF TOTAL UM CONCENTRATION AND TO AID IN DETERMINING MONITORING POINT LOCATIONS AND THESE ARE PLOTTED TO THE WEL FOR EACH CONSTITUENT.



a partial picture
of the wells that were
sampled for CSTA
analysis.

**Brenda J. Cooper, et al. v. Meritor, Inc.,
et al.**

Transcript of Proceedings

February 1, 2018

All depositions & exhibits are available for downloading at
www.brookscourtreporting.com
Please call or e-mail depo@brookscourtreporting.com if you need a
Username and Password.



Mississippi - Louisiana - Tennessee - New York
1-800-245-3376

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

BRENDA J. COOPER, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 4:16-CV-52-DMB-JMV

MERITOR, INC., ET AL. DEFENDANTS

CONSOLIDATED WITH

JOE E. SLEDGE, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 4:16:CV-53-DMB-JMV

MERITOR, INC., ET AL. DEFENDANTS

AND

KATHERINE LONGSTREET COOKE, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 4:16-CV-54-DMB-JMV

MERITOR, INC., ET AL. DEFENDANTS

AND

SRA INVESTMENTS, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 4:16-CV-55-DMB-JMV

MERITOR, INC., ET AL. DEFENDANTS

AND

FELICIA WILLIS, ET AL. PLAINTIFFS

V. CIVIL ACTION NO. 4:16-CV-56-DMB-JMV

MERITOR, INC., ET AL. DEFENDANTS

TRANSCRIPT OF PROCEEDINGS
(VIA AUDIO RECORDING)

February 1, 2018

Nikki L. Lloyd, CCR #1870

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 2</p> <p>1 THE BAILIFF: Court will come to order. 2 All rise. Your Honorable Judge Jane Virden is 3 presiding. 4 MS. RUSSELL: Morning, Your Honor. 5 THE COURT: Morning. Please be seated 6 y'all. Okay. Let me unpack my stuff that I 7 brought in here and we'll get underway. 8 Let's see. Now, who -- we have counsel 9 for Textron on the phone; is that right? 10 MR. SMITH: We do, Your Honor. It's 11 Bill Smith and Alexandra Russell. 12 THE COURT: Okay. Let's see. 13 MS. SMITH: And, Your Honor, this is Lea 14 Ann Smith for Boeing, Meritor and Rockwell 15 Automation also on the phone. 16 THE COURT: Okay. Sounds good. Okay. 17 Let's see. Exhibit A, B, documents -- 18 Okay. Good morning, again, to 19 everybody. For the record, we're here this 20 morning in 4:16-CV-52, what we commonly refer to 21 as Meritor these days, for the hearing on a motion 22 to compel the production to the plaintiffs of 23 certain documents that are the subject of the 24 clawback letter. Those documents, it's my 25 understanding, are in fact in the possession --</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COURT: Okay. All right. Before we 2 get started here underway, just a couple of things 3 I want to take up. First off, unless somebody 4 wants to object -- and if you do, I'll hear you -- 5 but my thinking is what we should do for purposes 6 of today is seal the record, seal the hearing, and 7 then I will allow -- because I don't -- you know, 8 I'm just concerned with this many documents, this 9 many people, documents having been produced and 10 actually reviewed by plaintiffs' counsel before 11 sequestration or the clawback letter, I -- you 12 know, I'm just concerned about any kind of 13 disclosures inadvertently on the record. And, of 14 course, anything that's a matter of the transcript 15 would be on the record if it's not under seal. 16 Then what I contend to do is to give y'all 90 days 17 from today in which to file a motion to consent -- 18 to continue the seal, because I don't think I -- I 19 have authority, at this juncture, to just seal all 20 of the documents or seal the transcript forever. 21 I think there has to be a finding and reasons for 22 further seal and so forth, but because I don't 23 want -- I know y'all have got a lot of other 24 things to do, I'm trying to get you beyond the 25 dispositive motion deadline before you're called</p>
<p style="text-align: right;">Page 3</p> <p>1 still in possession of plaintiffs' counsel, but 2 have been sequestered. Is that the circumstance 3 or do y'all need to update me? 4 MR. DEAS: No, that's the circumstance, 5 Your Honor. 6 THE COURT: Okay. And then, as -- as I 7 understand it, for the record, that once the 8 clawback letter was sent and the documents 9 sequestered, then counsel for Meritor redacted 10 those documents and sent the redacted versions to 11 plaintiffs' counsel, correct? 12 MR. DEAS: Correct, Your Honor. 13 THE COURT: Okay. And the Court has had 14 the benefit of review of both the redacted and 15 un-redacted version of those. 16 MR. DEAS: Yes, Your Honor. 17 THE COURT: And just, again, my 18 understanding is that there are approximately -- 19 well, Exhibit A -- privilege log, Exhibit A -- 20 there are two privilege logs. The first one 21 covers the great -- the vast majority of the 22 documents. In fact, I think there are only maybe 23 four documents or so that are subject to today's 24 motion that are on Privilege Log B; is that right? 25 MR. COUGHLIN: Yes, Your Honor.</p>	<p style="text-align: right;">Page 5</p> <p>1 on to file a motion -- further motion to seal 2 these documents. Does anyone have any objection 3 to that or suggestion about it? 4 MR. COUGHLIN: No, Your Honor. 5 THE COURT: Okay. The next thing I 6 would like to know before we get started here is, 7 it's not clear who Textron has designated as 8 experts? And Textron's counsel doesn't -- I mean, 9 I know you're on the phone and I told you, you 10 know, you can't argue. You're welcome to speak up 11 on this or any of the lawyers here presumably know 12 because they would have received the designation. 13 It's important to me, I think, for purposes of 14 today to know who those experts are. 15 MR. SMITH: Your Honor, this is Bill 16 Smith. I don't have a list in front of me. 17 Phillip, have you got something there? 18 MR. COUGHLIN: Your Honor, I can maybe 19 shed some light on that. 20 THE COURT: Okay, Tim. 21 MR. COUGHLIN: If you were to look -- 22 Your Honor, this is Tim Coughlin -- at Exhibit 1 23 to our response, we have the Meritor disclosure. 24 The Textron disclosure consists of all of those 25 experts that are under A, that would be</p>

2 (Pages 2 to 5)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 6</p> <p>1 Dr. Barbara Beck, Trevor Phillips, Dr. Robert 2 Powell, Ranjit Machado and Billy Hall. 3 THE COURT: All right. Those are all of 4 the specifically retained -- exclusively 5 specifically retained experts of Meritor? 6 MR. COUGHLIN: No, they were jointly 7 retained with Textron. 8 THE COURT: Okay. Right. But they 9 appear on here as -- 10 MR. COUGHLIN: Right. 11 THE COURT: Okay. All right. And does 12 Textron designate those in any capacity other than 13 specifically retained and reporting? So they're 14 designated in exactly the same manner. 15 MR. COUGHLIN: Correct. 16 THE COURT: Are there any -- in the case 17 of Meritor, of course, we know we've got one dual 18 appointment, Peeples, both reporting and 19 non-reporting, and then we've got one strictly 20 non-reporting, Mr. Ellis on behalf of Arcadis. 21 Are those similarly jointly designated? 22 MR. COUGHLIN: No. 23 THE COURT: No. Okay. All right. And 24 then the last question before we start up is 25 Exhibit G. G is the -- the report that Mr. Ellis</p>	<p style="text-align: right;">Page 8</p> <p>1 Okay. So I've printed off all of the 2 documents, and what I'd like to do, we're going to 3 start with Exhibit A, Privilege Log A, but rather 4 than starting with the first document on there, 5 those are the zip drive documents, I'm going to 6 skip those for now. We'll come back to them. 7 And, actually, I want to start on, I 8 think I said, 17. Yeah, I think that is what I 9 said. Yeah, let's start with Log Entry 17. All 10 right. Log Entry 17 being 7876. Let me see. 11 (Indiscernible.) It's in that PDF, but it is, in 12 fact, Document No. 7884 through 7887 as part of 13 PDF 7876. Everybody with me? 14 Okay. I obviously have read the 15 privilege log. I've looked at the documents. 16 I've made notes, et cetera, et cetera. But this 17 is the -- the privilege that is being claimed as 18 to this document is both the attorney/client and 19 the -- as I understand it, and the work product 20 privilege. I think we are all in agreement -- 21 anybody tell me differently, if not -- that the 22 Federal Rules will govern entirely issues related 23 to work product protection and FRE -- excuse me -- 24 Mississippi Rule of Evidence 502 pursuant to -- 25 FRE 501, I believe, directs you to look at 502 of</p>
<p style="text-align: right;">Page 7</p> <p>1 as VP of Arcadis -- and I may not be pronouncing 2 any of these names correctly, so y'all just bear 3 with me. It -- I'd like to see a copy of Exhibit 4 G if somebody has it available, that being the 5 report -- it's -- it's listed in the designation 6 as the Environmental Report of the Eastern -- you 7 know, the neighborhood here at issue. 8 MR. COUGHLIN: I do not have that with 9 me, Your Honor. It is -- the full report is maybe 10 about a page long. 11 THE COURT: Okay. I expected about as 12 much as that. But that's fine. Nobody has that 13 with them, is that correct? 14 MR. DEAS: No. Your Honor. I don't have 15 it, but I can access it. 16 THE COURT: Okay. Well, that's -- it's 17 okay. It's just -- I may have some questions 18 about it as we move forward in the course of our 19 discussion. 20 All right. Y'all, I've gone through and 21 I have printed off and have before me all of the 22 documents and I -- excuse me -- time out. 23 UNIDENTIFIED SPEAKER: (Indiscernible.) 24 THE COURT: Oh, I'm sorry. Thank you. 25 Yeah, do -- let's now seal. You ready?</p>	<p style="text-align: right;">Page 9</p> <p>1 the Mississippi Rules to govern attorney/client 2 privilege issues. Everybody in agreement with 3 that? 4 Okay. So with that, let me -- well, we 5 know from the privilege log itself that these are 6 handwritten notes of a T&M employee. They are 7 marked -- they're marked privileged and 8 confidential. Apparently, these are notes -- 9 yeah, it appears that these are notes taken during 10 a conversation that involved at least Mr. Peeples 11 and Mr. -- I believe Mr. Powell, in this case. 12 Mr. Powell who is a reporting expert, correct? 13 MR. COUGHLIN: Your Honor, the Rob P. is 14 not Mr. Powell. 15 THE COURT: It's not Mr. Powell. Who is 16 that? 17 MR. HUBBARD: It's Rob -- I'm trying to 18 get the spelling of it. I think it's Vander -- 19 he's a T&M employee. 20 MR. COUGHLIN: All right. 21 MR. HUBBARD: The other one is Regan 22 Welch, and she's an employee as well. So all -- 23 the notes say here that the three people there are 24 T&M employees. 25 THE COURT: Okay. Let me -- I want to</p>

3 (Pages 6 to 9)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 10

1 say a couple of things and then I'll turn it over
2 to you to advance and establish, as you must, each
3 element of the attorney/client privilege and/or
4 the application of the Work Product Doctrine.
5 In this case – and this is going to be
6 an issue that I – we're – there's going to be
7 much discussion about, I would imagine, through
8 the course of the day, because it's going to raise
9 its head every time I see Mr. Peebles' name in
10 these communications. In this case,
11 Meritor designated Mr. Peebles as a non-reporting,
12 non-specifically retained expert on all of the
13 subject matter that is listed on Exhibit F. He is
14 also, according to the designation that was made
15 on those very same topics, designated as a
16 reporting expert. Now, I understand that in some
17 recent e-mails between the lawyers, there has been
18 discussion about, well, maybe, you know, he's only
19 going to be reporting on this, but I am going to
20 be governed by what is on the docket in this case.
21 On the docket in this case is an expert
22 designation of Mr. Peebles on all of the subject
23 matters listed on Exhibit F, being 18 reports. I
24 mean, it's – there's just – you know, and
25 there's no – there's no motion before me and has

Page 12

1 If it is Your Honor's belief that he is now a
2 reporting expert for all 18, then the protections
3 apply to all 18.
4 THE COURT: In his reporting capacity, I
5 agree with you, but you have designated him as
6 also a non-reporter on those subjects, and to that
7 extent, you waive the privilege that might
8 otherwise have existed.
9 MR. COUGHLIN: Well, I don't see, under
10 Your Honor's logic, you can – you can't do both,
11 because I get – Meritor and its experts get those
12 protections as a report-generating expert on those
13 18 reports. You can't then say, well, now I'm
14 going to pull the rug out from under you and then
15 you don't. What we made clear, to the extent
16 there was any ambiguity – when this was produced
17 in August, we heard nothing from the plaintiffs'
18 counsel until December. We instantly said,
19 because of the timing of litigation and when
20 litigation was in the front of everybody's mind,
21 which was in January of 2015, those beforehand, he
22 is a non-report-generating expert, and those after
23 January of 2015, he is a report-generating expert
24 and is entitled to the privileges in the Rules.
25 Now, one of the other issues in this

Page 11

1 not been one regarding the sufficiency, adequacy
2 or any other aspect of these expert designations.
3 So, in this case, that is – that's my view of it.
4 You're welcome to – I know – and you're – the
5 reason I'm mentioning this now is I'm well aware
6 that in your response to the motion to compel,
7 Meritor says, irrespective of what we did with
8 regard to him as a non-reporter, we designate him
9 as a reporter, and, therefore, we get the work
10 product protections afforded by Rule 26. And,
11 yes, you're right in his role as a reporting
12 expert, but because you designated him as a
13 non-reporter on the very same subjects, unless you
14 convince me otherwise, I do not see a legal basis
15 to argue that, in his non-reporting capacity, he
16 is afforded the same protections as a reporter.
17 Go ahead.
18 MR. COUGHLIN: May I speak to that, Your
19 Honor?
20 THE COURT: You may.
21 MR. COUGHLIN: If – if Your Honor is
22 under that impression that he is somehow both as
23 to all 18, then you cannot do it and run around
24 the protection of an expert which submits reports.
25 Those protections are in the Civil Rules for all.

Page 13

1 case is that there – there's parallel issues
2 going on. There is disputes or there are disputes
3 with the EPA and the MDEQ, which Mr. Peebles is
4 also involved in. He is consulting expert for
5 purposes of those. But he is not rendering any
6 opinion in this case on those issues. He is a
7 consulting expert as to separate and distinct
8 disputes with the EPA and the MDEQ.
9 THE COURT: Well, you – you and your
10 firm are very sophisticated and I'm quite certain
11 that when you designated Mr. Peebles as a
12 non-retained expert on all of the matters listed
13 on Exhibit F – because that is what your
14 designation says, and you're welcome to – in
15 fact, I'll read it into the record.
16 Expert – this is a separate category
17 for Mr. Peebles that you created. XV: Expert not
18 specifically retained pursuant to Rule 26 and
19 retained pursuant to Rule 26. Defendants identify
20 the following expert pursuant to Rule 26 in each
21 of the above styled cases: Jim Peebles, Vice
22 President, Technical Engineer, T&M Associates,
23 Inc., and an address. Exhibit F contains a copy
24 of Mr. Peebles' CV, list of reports, including all
25 opinions, analysis, sources and references

4 (Pages 10 to 13)

Transcript of Proceedings 2/1/2018

Page 14

1 contained therein, which have previously been
2 submitted to the United States Environmental
3 Protection Agency and the Mississippi Department
4 of Environmental Quality and previously produced
5 to all parties, upon which Mr. Peeples will rely
6 and testify. The materials reflect the subject
7 matter on which Mr. Peeples will testify. All of
8 the opinions Mr. Peeples may express to a
9 reasonable degree of scientific, technical and/or
10 engineering certainty. Mr. Peeples' hourly rate
11 for expert testimony is \$300.

12 And then we turn to Exhibit F, and on
13 Exhibit F are a list of 18 reports which are
14 said -- and I -- it's somewhere between 6- and
15 10,000 pages. I'm not sure. I think plaintiffs
16 said 10,000 pages. I think the defendants said
17 6,000 pages, plus some number of additional
18 information appearing on megabytes, which is an
19 extremely large number of papers -- pages. So --
20 and the time, of course, for designating experts
21 and supplementing expert reports, et cetera, et
22 cetera, has long since lapsed. So that is the
23 designation.

24 And as I say, I'm not commenting one way
25 or the other on the adequacy, inadequacy or

Page 16

1 benefit of that, and my -- I'm not inclined to
2 agree with that. I don't see any -- to me, that
3 logic is the flawed logic.

4 The other thing that concerns me about
5 this and that drives a lot of what we're looking
6 at today is the breadth of Mr. Peeples' testimony.
7 The subjects on which he is expected to testify
8 are -- you know, I mean, boy, that's a lot of
9 subject matter Mr. Peeples is designated, those 18
10 reports and all of the data that's contained in
11 those. And, of course, you know that as -- if --
12 once the privilege is waived, then it waives it as
13 to all matters related to those topics, not just
14 those topics, but matters related to them. So, I
15 mean -- so those are concerns of mine, but I --
16 you know, I want to give you a fair shot in
17 talking to me about it. Certainly, I can see a
18 way that if Mr. Peeples were to claim -- he could
19 claim the attorney/client privilege, perhaps, in
20 circumstances where his testimony -- where what
21 he's doing is so unrelated -- you know, was so
22 before he did anything, but I don't -- you know, I
23 don't know why any of that would be the subject of
24 this stuff. This is all 16 and 17. It's all
25 about remediation of this site, which is what --

Page 15

1 anything about the designation, because that's not
2 the issue before the Court. What I'm looking at
3 is a designation of this gentleman as a
4 non-reporter on all of these subjects, and there
5 is case law, for example -- I don't know of this
6 certain -- this particular situation, nor to my
7 knowledge, have y'all produced any where this
8 exact circumstance has arisen. But there are
9 cases where experts have been designated as, for
10 example, a reporter and then the designation is
11 later changed and the rulings in those cases, as I
12 appreciate them, have been that the -- that once
13 designated, even despite the change, that the
14 rules that, you know, follow the original
15 designation continue. So if you designated
16 somebody as a non-reporter on a subject and later
17 changed them to a reporter on that subject, they
18 could still be treated as a non-reporter or
19 maybe -- and I think those cases didn't actually
20 deal with reporters and non-reporters, but
21 testifying experts and consulting experts and
22 changing the designations there. So -- so
23 that's -- yeah, that's a real concern and, you
24 know, I hear you, you're saying, well, since we
25 designate him as both -- on both, we get the

Page 17

1 the environmental situation at this site, which is
2 what this case is about, and what he's expected to
3 give -- apparently, if this designation is
4 ultimately deemed sufficient, he's permitted to
5 testify. What he's designated on is a wealth of
6 opinions and facts and data.

7 MR. COUGHLIN: May I, Your Honor?

8 THE COURT: You may.

9 MR. COUGHLIN: The case law that you
10 are, I believe, thinking of is where an expert has
11 either been designated as a consulting expert and
12 as a report-generating expert. And Mr. Deas, I
13 think, cited some of those in their moving papers,
14 but in those cases, it's where the testifying
15 expert reaches across the wall and pulls over
16 information from when he or she was a consulting
17 expert. That has nothing to do with the kinds of
18 privileges that we are talking about initially for
19 the designation. And if the Court is under the
20 impression that he is identified as both for all,
21 we will withdraw him as a non-report-generating
22 expert for all of them, because the kinds and
23 quality of opinions that find themselves in the
24 reports that we believe he is identified for as a
25 report-generating expert, a percipient witness

5 (Pages 14 to 17)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 18</p> <p>1 cannot testify to. He didn't do the groundwater 2 sampling. He didn't do a lot of it. He had 3 people on his team doing it, and he then renders a 4 report that has opinions and analysis based upon 5 underlying data. That is not the kind and quality 6 of expert that is normally thought of as a 7 non-report-generating expert. 8 Plaintiffs brought up the treating 9 physicians as though a treating physician can 10 never be a report-generating expert, and we all 11 know that's just not true. If the treating 12 physician is merely going to testify to what they 13 did in terms of their care and treatment of -- 14 whether it's plaintiff or defendant -- whomever, 15 that can be a non-report-generating expert and the 16 medical records would be what they would be 17 testifying about. Now, if counsel says, I want 18 you, treating physician, to render a prognosis on 19 maybe life expectancy, that is not in the medical 20 records. That's taking things, doing additional 21 analysis, and in those instances. The Courts say, 22 wait a minute, you've got to have an expert report 23 for that. 24 THE COURT: Uh-huh. 25 MR. COUGHLIN: You can't just put that</p>	<p style="text-align: right;">Page 20</p> <p>1 him, we believe from January 2015 forward, but if 2 the Court has that concern, we'll go back, we'll 3 live with that. 4 THE COURT: Well, Mr. Coughlin, you are 5 aware there are cases for the proposition that 6 once you designate them, the mere act of trying to 7 un-designate them does not then change the status 8 of -- of what the rules -- privilege and the Work 9 Product Doctrine, the application. 10 MR. COUGHLIN: That -- those cases, Your 11 Honor, dealt with consulting versus expert 12 generating, not this situation. 13 THE COURT: Well, you're the architect 14 of this situation. 15 MR. COUGHLIN: I understand that. 16 THE COURT: Meritor is. And I'm really 17 not confused, Mr. Coughlin, not at all about this. 18 I can read the expert designation and see what it 19 designates him as, and I understand the -- the -- 20 you know, that's fine and I'll hear you on your 21 effort to -- and I'll hear counsel opposite on 22 withdrawing him. If that's something you -- you 23 are affirmatively telling the Court you wish to 24 do. 25 MR. COUGHLIN: We will withdraw him as a</p>
<p style="text-align: right;">Page 19</p> <p>1 treating physician on the stand and allow them to 2 testify to that, because there's something more 3 than just what's in the medical records. 4 Likewise, here, what we have designated 5 Mr. Peebles on goes far beyond just the record, 6 the test results of what a single well might be or 7 even what the test results of a group of wells. 8 It is applying the expertise of assembling that 9 data and rendering opinions with regard to things 10 like groundwater flow, with regard to location of 11 sources. All of those kinds of things are far 12 beyond what a percipient witness who might be a 13 non-report-generating expert might be. And so if 14 it is -- and we scoured the cases as -- and the 15 Court, as you have, Your Honor, as plaintiffs 16 have, nobody has come up with this, with something 17 like this. I can understand the Court's possible 18 confusion. But I will allay the Court's confusion 19 by withdrawing him as a non-report-generating 20 witness, and we'll rely on those 18. 21 At that point, the only thing is whether 22 you look at the sufficiency of the reports as to 23 whether they meet the Rule 26 requirements -- and 24 that issue is not before this court for today -- a 25 report-generating expert, as we have designated</p>	<p style="text-align: right;">Page 21</p> <p>1 non-report-generating expert. 2 THE COURT: All right. All right. So 3 you want to withdraw him in that capacity. I will 4 hear from y'all. And then there's the next -- 5 that opens up the question of, even if I allow the 6 withdrawal of him as a -- you know, per his 7 designation, whether that really changes anything. 8 But let me do ask you a couple of things: One, 9 according to the designation, he's being paid \$300 10 an hour for his testimony as a retained expert -- 11 MR. COUGHLIN: And his work. 12 THE COURT: -- but according to his 13 affidavit, he has not -- he is not being paid. 14 His company, T&M, of which he is vice president, 15 is the one who is being paid. 16 MR. COUGHLIN: Your Honor, we have -- 17 the experts that we have retained, such as Ranjit 18 Machado, he is part of Ramboll Environ. 19 THE COURT: Uh-huh. 20 MR. COUGHLIN: The invoice come from 21 Ramboll Environ, and we pay Ramboll Environ. We 22 don't pay Mr. Ranjit Machado directly, because 23 there are a number of people that work for Ranjit 24 Machado's team. Likewise, Mr. Powell, there are a 25 number of people that work for Mr. Powell on his</p>

6 (Pages 18 to 21)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 22</p> <p>1 team. We don't -- those people are on the bill 2 and the service is paid. 3 THE COURT: So when you -- when you 4 retain a team as to -- as an expert -- I mean, 5 have you looked at what the legal significance of 6 that is? 7 MR. COUGHLIN: Your Honor, in terms of 8 we get to retain the expert in that team. Do you 9 mean the scope of communications within the team? 10 THE COURT: Right. The fact that it's 11 the company that's being paid, and you're now 12 telling the reason it's being paid is it's doing 13 the work as opposed to -- it -- as opposed to 14 Mr. Peeples being the one responsible for doing 15 the work and, therefore, getting paid for it. 16 MR. COUGHLIN: Well, it's Mr. Peeples 17 who is the testifying expert, who is the author of 18 the reports. 19 THE COURT: Who is being paid nothing 20 for his work from you? 21 MR. COUGHLIN: Well, I think Your Honor, 22 any -- you know, any expert -- no expert is likely 23 a sole proprietorships. They all set up LLCs or 24 LLPs or companies of which is the billing entity, 25 and, you know, that's who lawyers pay is the</p>	<p style="text-align: right;">Page 24</p> <p>1 the adequacy of the disclosure under Rule 26 is 2 not currently before the Court, but that's because 3 the Court allowed those motions challenging the 4 adequacy in the October 3rd hearing to be put off 5 to the dispositive motion deadline, so no doubt 6 that will be before the Court, and if you are left 7 with Mr. Peeples designated only as a reporting 8 expert, and that designation is deemed 9 insufficient for lack of (indiscernible), I'm just 10 giving -- I think in fairness to everybody 11 involved, I'd feel better if I gave you just a few 12 minutes to think about it, including, if for any 13 reason, you want to ask for more additional time 14 to think about it once you've had a chance to talk 15 here just a minute. Now, maybe before -- before 16 we do that, let me ask to hear from Mr. Liston 17 about the issue, and then we'll take a break. 18 Go ahead. 19 MR. COUGHLIN: Before we do that, Your 20 Honor, I do want to clear something up for you. 21 You talked about somehow remediation at the site 22 is the subject of what this lawsuit is about. And 23 I want to make clear that there are remediation 24 efforts at this site that have nothing to do with 25 the neighborhood and work that is being done by or</p>
<p style="text-align: right;">Page 23</p> <p>1 billing entity. 2 THE COURT: I understand. And I know he 3 is the vice president of T&M. Are you telling me 4 he has an ownership interest in T&M? 5 MR. COUGHLIN: I don't believe he has an 6 ownership interest, Your Honor. 7 THE COURT: All right. 8 MR. COUGHLIN: I could be wrong. 9 And, Your Honor, I'm not yawning. My 10 ears are clogged. I'm trying to unclog my ears. 11 THE COURT: No. And if you need to take 12 a break or if you need anything, water or 13 whatever, let us know, because I definitely don't 14 want you -- I don't want to put you through more 15 misery than necessary. Absolutely. 16 But -- well, let me -- I know -- I'll 17 tell you what I'm going to do, because y'all -- I 18 don't know if you're surprised by this or not 19 surprised by it, but I'm a little concerned about 20 your statement that you want to withdraw him now. 21 I'm not suggesting that's not the thing you want 22 to do. What I am willing to do is give y'all a 23 few minutes, a recess for, you know, five, ten 24 minutes to let y'all caucus a few minutes about 25 that decision, realizing, as you point out, that</p>	<p style="text-align: right;">Page 25</p> <p>1 on behalf of Meritor with experts for those are 2 not something that these experts are going to be 3 testifying on. And the -- and the Rules are clear 4 in terms of the scope of inquiry. It's in forming 5 their opinions, and if they're not rendering 6 opinions (coughing) this PRB out on the western 7 side right near the Riverdale Creek, there is no 8 plaintiff allegation that somehow that's impacting 9 the neighborhood. 10 Yes, there's a lot of work being done at 11 the PRB. Mr. Peeples is involved in that. 12 THE COURT: Isn't the PRB discussed in 13 some of those 10,000 pages of material attached to 14 his expert designation. 15 MR. COUGHLIN: It's referenced, but in 16 terms of the -- the (coughing) that was the sole 17 requirement of the EPA with regards to what's 18 going -- the groundwater underneath the plant. 19 But in terms of the current work on the PRB and 20 working -- negotiating with the EPA, that's not 21 part of this lawsuit. 22 THE COURT: Well -- 23 MR. COUGHLIN: Similarly, there are 24 documents on the privilege log and in the next 25 privilege log dealing with issues inside the plant</p>

7 (Pages 22 to 25)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 26</p> <p>1 that are solely inside the plant. Those have 2 nothing to do with the neighborhood. Those are 3 consulting expert privileges. 4 THE COURT: I understand that that is 5 certainly your position and your argument. As you 6 know, the law says that it's all a very fact 7 specific inquiry once you get past whether, you 8 know, it's a non-reporter, reporter and those kind 9 of issues. Then when you get down to the 10 nitty-gritty, is it done to render legal advice in 11 the case of the attorney/client privilege or is it 12 done in anticipation of litigation, in the case of 13 the work product privilege, and then, you know, 14 how far the waiver extends, the scope of any 15 waiver, that starts getting all down very factual 16 in stuff. But you know what you start with, you 17 start with, what's the expert designated on? And 18 when you have an expert designated on such a 19 wealth of material, you're going to find it, I 20 suggest, very difficult to establish that 21 discussions about the same matter are not related 22 to the matters that he has been designated, 23 whether you like it or not, because y'all know 24 what the rule is about the waiver. Once it's 25 waived, it's just a -- it's a broader inquiry</p>	<p style="text-align: right;">Page 28</p> <p>1 them as an expert even though you've withdrawn 2 them as an expert. So -- but I'm not -- I'm not 3 ruling on that issue. I'm just telling you that I 4 know that there is such case law out there. 5 MR. COUGHLIN: I agree, Your Honor, 6 that -- with the kinds of case law you talked 7 about, that once I have deposed plaintiffs' expert 8 and they withdraw the expert, they're not going to 9 put him in trial, I can still use parts of his 10 deposition to demonstrate the fallacy of their 11 position. I can do that. But this is -- this is 12 an animal that I don't believe that there is case 13 law on, and, therefore, because of the protections 14 in the Rule for a report-generating expert -- the 15 Rule doesn't say, oh, there's exceptions if you do 16 this. The Rule says, there's only three 17 exceptions and that's it: compensation, facts and 18 data and assumptions that you ask them to rely on. 19 And those are only communications from me. 20 THE COURT: Mr. Coughlin, you do not 21 have to convince me that a specially retained 22 expert has the protections afforded by the work 23 product rule through the 2010 amendment. You do 24 not have to prove -- what you do have to do though 25 is get over the fact that you have designated this</p>
<p style="text-align: right;">Page 27</p> <p>1 then. It's whether these things are related to 2 those subject matters. And there's case law to 3 this effect. I got a Mississippi case out of the 4 Southern District on the attorney/client waiver 5 point. 6 But it -- but the long and sort of it 7 is, we'll have to get into those weeds, that -- I 8 see that as a separate issue really distinct 9 from -- not totally, but in some measure, it seems 10 to me this first hurdle of just getting over, what 11 is Mr. Peebles for today's purposes. 12 MR. COUGHLIN: Before we hear from 13 Mr. Deas, Your Honor was talking about you believe 14 there was case law that you have seen where this 15 instance may have appeared in the past with a dual 16 designated expert? 17 THE COURT: No. In fact, I think what I 18 said was that didn't involve reporter, 19 non-reporter dual designation, and, in fact, I 20 don't think I have seen any case like that. What 21 I have seen is where somebody is designated, like 22 for example, as a testifying expert, and then they 23 are -- they are no longer designated as a 24 testifying expert. They still get treated -- in 25 fact, the other side, some case law says, can use</p>	<p style="text-align: right;">Page 29</p> <p>1 man as a non-reporting expert on those very same 2 topics. That's what you did. You created this. 3 I didn't designate him as a non-reporter and 4 you're ask -- essentially asking me to disregard 5 the fact that you did that. I'm not asking you to 6 produce any of this in his retained capacity. I 7 am asking you -- or telling you that the law 8 requires that you can't claim it, because you've 9 designated him as a non-reporter too on all of 10 these subjects. 11 But let's -- let's -- let's hear from 12 Mr. Liston and then let's take our little break so 13 y'all can decide whether you really want to make 14 that decision. 15 MR. DEAS: Your Honor, there certainly 16 can be hybrid experts where there are facts that 17 they have knowledge of and expert testimony that 18 they can provide in a case. And I'm sure the 19 Court has seen it on multiple occasions and so 20 have all of the counsel that are present here 21 today. And the cases that I think Mr. Coughlin 22 is -- wants to refer to or was trying to refer to 23 were some of those cases in the early days of 24 trying to deal with those sorts of experts after 25 the 2010 amendments where you were dealing with</p>

8 (Pages 26 to 29)

Transcript of Proceedings 2/1/2018

Page 30

1 people that were consulting witnesses that might
2 have had some knowledge in working in an expert
3 capacity on a case and the Courts were trying to
4 sort out what to do after the Rule -- after the
5 changes to Rule 26. We've all read them, and I
6 won't go too deeply into them.

7 As we said in our briefing papers, and I
8 won't belabor it, we got that sort of a hybrid
9 expert fact witness here in the person,
10 Mr. Peeples. And I think the Court's analysis of
11 the disclosure is spot on. It says what it says.
12 And the plaintiffs have depended on that reading
13 of it for some time now in making all manner of
14 decisions about how they behave in this case.

15 Even if they chose to de-designate him
16 as a non-reporting expert, it would seem to be
17 unfairly and unduly prejudicial to the plaintiffs
18 to then deprive us of the ability to inquire into
19 these subject matters, which we've always assumed
20 that we would have the ability to inquire into
21 since he was designated as a non-testifying
22 expert, because they, months after the close of
23 expert discovery, we all thought, suddenly decided
24 to shift course. I'll wait and (indiscernible).

25 THE COURT: Let's -- it's about 15 of

Page 32

1 let me ask the guys, that is our defense counsel,
2 why don't y'all speak into those mics and let's
3 see what Bill says.

4 MR. DEAS: Bill, can you hear me. This
5 is Lawrence?

6 MR. SMITH: I can now.

7 MR. DEAS: Okay.

8 THE COURT: But Law- -- but look what
9 you're doing, Lawrence, you're bent all the way
10 over, so pull it to -- see, you're never going to
11 do that. You'll stand back up straight as soon as
12 you start talking, so talk now normally.

13 MR. DEAS: Bill, can you hear me?

14 MR. SMITH: Not really.

15 THE COURT: Okay. Yeah, that's the
16 problem. We'll move those mics. If you moved
17 them as close as we can get them to you without
18 pulling them out, because I have no idea what
19 we're going to do if y'all manage to disconnect
20 all of that.

21 MR. DEAS: That's all we got. Okay.
22 Bill, Bill.

23 THE COURT: No, you're going to --
24 try -- try being seated and bend it over towards
25 you.

Page 31

1 11:00. Why don't y'all take -- why don't you take
2 15 minutes, get some water, and you can go into
3 the visiting judge's chambers over here and that's
4 a -- give you time to meet privately.

5 MR. SMITH: Your Honor --

6 THE COURT: Yes.

7 MR. SMITH: -- this is Bill Smith. I
8 didn't want to interrupt while you were going
9 through the arguments, and it may just be our
10 tough luck in not being there, but none of us on
11 the phone could hear a word that any of the
12 lawyers are saying, and as the call went on, it
13 got more difficult to even hear you. And that's
14 just a matter of a switch not being turned on. I
15 wanted to bring it to the Court's attention. If
16 there's nothing that can be done about it, that's
17 fine.

18 THE COURT: All right. Thank you, Bill.
19 I've moved my mic as close as I can get it to me.
20 Can you hear me clearly now?

21 MR. SMITH: I can, yes, ma'am.

22 THE COURT: All right. I'll try to be
23 mindful. And do feel free to just, you know,
24 say -- break in, it doesn't really matter, for
25 that purpose, if you can't hear. But let me --

Page 33

1 MR. DEAS: Bill, can you hear that?

2 MR. SMITH: Yes.

3 THE COURT: All right. I'll tell what
4 we're going to do then, let's do that, Lawrence.
5 I will ask, are you okay with being seated while
6 you present your arguments?

7 MR. DEAS: As long as you are, Your
8 Honor.

9 THE COURT: I'm fine with it. And I
10 think probably counsel -- defense counsel table as
11 well. Let's see if that helps over here.

12 MR. COUGHLIN: Bill, can you hear me?

13 MR. SMITH: I can now.

14 MR. COUGHLIN: Okay.

15 THE COURT: All right. That's what
16 we'll do. Y'all move them as close as you can and
17 you can just make your arguments seated.

18 And with that, we will adjourn or recess
19 here for just a few minutes.

20 THE BAILIFF: All rise.

21 (Brief recess.)

22 THE BAILIFF: Court will come to order.
23 All rise.

24 THE COURT: Please be seated, y'all.
25 Okay. We are now back on the record with defense

9 (Pages 30 to 33)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 34</p> <p>1 counsel, and plaintiffs counsel as far as that's</p> <p>2 concerned, having had a chance to discuss the</p> <p>3 suggested withdrawal of Mr. Peebles as a</p> <p>4 non-reporting expert. Is there any further</p> <p>5 information that defense counsel wants to provide</p> <p>6 at this point?</p> <p>7 MR. COUGHLIN: Your Honor, while that is</p> <p>8 my current belief, it's something I believe I need</p> <p>9 to discuss with my client, and in light of the</p> <p>10 absolute dearth of case law that either side</p> <p>11 submitted to the Court or that the Court had been</p> <p>12 able to find, I think that this requires a little</p> <p>13 bit more thought before a final decision is made,</p> <p>14 and so I'm taking the Court up on its invitation</p> <p>15 for some additional time for us to alert the Court</p> <p>16 as to formally withdrawing Mr. Peebles as a</p> <p>17 26(a)(2)(C) witness.</p> <p>18 THE COURT: All right. I want to make</p> <p>19 sure everybody understands. That's fine, but we</p> <p>20 are here today for the hearing on -- on these</p> <p>21 documents, so for purposes of today, I will</p> <p>22 proceed with the situation that he is a</p> <p>23 non-reporting expert. And, frankly, given the</p> <p>24 time that the withdrawal is suggested, if in fact</p> <p>25 it is ultimately formally made, I do not think</p>	<p style="text-align: right;">Page 36</p> <p>1 e-mail, and as I read it, and we'll ask Mr. Deas</p> <p>2 about it, there seems to me to be a distinction</p> <p>3 there. I -- in other words, I don't think he</p> <p>4 agreed with you that Mr. Peebles was properly</p> <p>5 designated as a non-retained expert on all of the</p> <p>6 subjects, but I don't -- I don't think that means</p> <p>7 that he was designated as a non-reporting expert</p> <p>8 on all subjects. So, I mean, I see those as two</p> <p>9 different things and the matter, as I've said</p> <p>10 before and as you've said before, of the</p> <p>11 sufficiency of the designations is not before the</p> <p>12 Court.</p> <p>13 MR. COUGHLIN: Nor the sufficiency of</p> <p>14 the reports themselves.</p> <p>15 THE COURT: Nor the sufficiency of the</p> <p>16 reports themselves. I mean, they're just not</p> <p>17 before the Court. So what we have -- you know, I</p> <p>18 go back to this -- I mean, you know, it's a card</p> <p>19 laid, a card played. What is before us now is a</p> <p>20 designation of this man as a non-reporter on all</p> <p>21 of these subjects, and he -- whether he's</p> <p>22 ultimately withdrawn or not, he has been</p> <p>23 designated on that -- in that fashion all the way</p> <p>24 through this, including past the time, you know,</p> <p>25 that Mr. Peebles was designated -- I mean, was</p>
<p style="text-align: right;">Page 35</p> <p>1 that that changes the circumstance with regard to</p> <p>2 the privileges afforded. In other words, it would</p> <p>3 have been one thing if some time in the past, he</p> <p>4 had been withdrawn for that purpose, but here,</p> <p>5 after he's been deposed, after the close of</p> <p>6 discovery and at the point that we are at today, I</p> <p>7 do not think, and will so rule, that the -- any</p> <p>8 ultimate withdrawal of him, in my view, does not</p> <p>9 affect, for purposes of today, the Court's ruling.</p> <p>10 MR. COUGHLIN: With regard to that, Your</p> <p>11 Honor, I would point out that this issue of some</p> <p>12 confusion was first raised by Mr. Deas in December</p> <p>13 of this year after the close of discovery. And we</p> <p>14 have attached the e-mail correspondence as Exhibit</p> <p>15 2 to our opposition, and I believe, if you read</p> <p>16 that, as we read that, Mr. Deas was certainly</p> <p>17 under the impression that Mr. Peebles was a</p> <p>18 report-generating expert, certainly, as to the</p> <p>19 Moose Lodge Road 2016 report and Kirk PCA report,</p> <p>20 and then had questions about the others which we</p> <p>21 cleared up for him. So I don't believe even</p> <p>22 Mr. Deas could honestly represent that he thought</p> <p>23 that Mr. Peebles was a non-report-generating</p> <p>24 expert for all 18, one of which is a database.</p> <p>25 THE COURT: Well, I have read the</p>	<p style="text-align: right;">Page 37</p> <p>1 deposed, so -- and there is authority for not</p> <p>2 permitting a withdrawal at, you know, this late</p> <p>3 date. Now, I'm not going to quote you a Fifth</p> <p>4 Circuit case at the moment. I think there's some</p> <p>5 cases of which I'm aware out of the Northern</p> <p>6 District, maybe, of California that discuss the</p> <p>7 reasons for that. And I -- I suggest to you that,</p> <p>8 you know, they are very practical reasons why</p> <p>9 you're not permitted to do that and, you know,</p> <p>10 change the rules that are applicable. It's one</p> <p>11 thing -- and, I mean, you can withdraw him. It's</p> <p>12 just that whether you can, by withdrawing him,</p> <p>13 thereby change the dynamic of what things were</p> <p>14 during the course of discovery, so...</p> <p>15 MR. COUGHLIN: So long as there's a</p> <p>16 clear understanding of all parties that</p> <p>17 Mr. Peebles is a report-generating expert under</p> <p>18 the Rules, and we believe is -- therefore, the</p> <p>19 party is entitled to all of the privileges under</p> <p>20 Rule 26 for that designation.</p> <p>21 THE COURT: But I -- I definitely</p> <p>22 understand that that is your argument, and I think</p> <p>23 that's laid out in your response to the motion to</p> <p>24 compel. But whether he is properly designated is</p> <p>25 another matter. But I agree with you, he is</p>

10 (Pages 34 to 37)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 38

1 designated as a reporting expert on all of the
2 same subjects that he's designated as a
3 non-reporting expert on.
4 MR. COUGHLIN: That is not our position,
5 Your Honor.
6 THE COURT: I'm sorry.
7 MR. COUGHLIN: You were inferring that
8 we are agreeing with your dual designation for
9 everything, and I – Meritor does not take that
10 position.
11 THE COURT: All right. Because
12 Meritor takes the position that it did not
13 designate him as a non-reporter on all matters on
14 Exhibit F?
15 MR. COUGHLIN: Correct.
16 THE COURT: Okay. But the same
17 designation you construe as designating him on all
18 matters as a reporting expert?
19 MR. COUGHLIN: Your Honor, I will live
20 with the designations that – and clarifications
21 that we made in our e-mail to Mr. Deas. That is
22 part of the record in our observation – in our
23 opposition.
24 THE COURT: Okay. All right. I think
25 we've – we've discussed this issue, probably

Page 40

1 decision may not end here.
2 THE COURT: I am not permitted to give
3 advisory opinions. I don't think that is really
4 proper to do. But if I analyze this from the
5 reporter standpoint – I will make this comment,
6 that a reporter – when it comes to work product,
7 you know, that's not the end of the issue. Then
8 you have to get into, well, does this – is this a
9 fact or data, is this information that is related
10 to anything that's in that 10,000 pages worth of
11 stuff? And, again, you made this broad
12 designation. Even as a reporter, you have listed
13 him, you know, on the – just everything in the
14 kitchen sink, frankly, and I – that's an
15 overstatement. You've listed him on approximately
16 10,000 pages – y'all can correct me on the exact
17 number – of opinions, facts and data. You've not
18 said, he's not going to be testifying on these
19 portions in this document or that document.
20 That's what you've done. And so even that would
21 appear to me to be a very difficult hurdle for
22 you. Not only that, whether it is – you still
23 have to show that it's done in anticipation of
24 litigation for the work product privilege, and I'm
25 assuming that's the one you're particularly

Page 39

1 gotten about as much out of it as we're going to
2 get for the day.
3 With that, why don't we – we'll start,
4 y'all. I think – let's just get started.
5 So on 17, it – in my view – I've
6 looked at the argument for and against, in my view
7 this is a conversation – obviously, labeling
8 privileged and confidential does not make it
9 privileged and confidential of it – you know, of
10 itself, the mere labeling. Mr. Peeples is a
11 participant in this discussion. Mr. Peeples has
12 been designated, in the Court's view, as a
13 non-reporting expert on all of the matters set
14 forth on Exhibit F, which is a very, very wide
15 breadth of things, and short of Meritor's counsel
16 representing to me that the matters that are
17 discussed hereon, including, for example, PRB,
18 the – you know, and various other things that are
19 here, are not related to some matter that is –
20 appears in some report in Exhibit F –
21 MR. COUGHLIN: Your Honor, if we are
22 going to go through these one at a time with your
23 understanding, can we also get how you would rule
24 if he was a report-generating expert only, because
25 I think that would be informative because that

Page 41

1 interested in, because you realize as a retained
2 expert, anything that's communicated to him is not
3 attorney/client privilege.
4 MR. COUGHLIN: And with regard to this
5 particular document, Your Honor, this is August 2
6 of 2017 –
7 THE COURT: Uh-huh.
8 MR. COUGHLIN: – just before our expert
9 designations. The issue of the efficacy of the
10 PRB is not an issue upon which Mr. Peeples was
11 retained to testify about.
12 THE COURT: Is it addressed in any
13 fashion in the 10,000 pages of information,
14 Mr. Coughlin?
15 MR. COUGHLIN: Your Honor, the ten –
16 it's really 6,000 pages, contain a tremendous
17 amount of facts and data with regard to well
18 sampling. With regards to the – no, it does
19 not – the opinions, the reports that those data
20 support are maybe 20 or 30 pages each, and I think
21 there's probably three of them that are
22 significant. That's it. And so when we're
23 talking about the PRB, while it is mentioned that
24 it was installed in the 2004, 2005 timeframe,
25 it – it doesn't talk about or they don't talk

11 (Pages 38 to 41)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 42</p> <p>1 about the efficacy of the reductive capacity of 2 the PRB, which is what this is about, and how 3 Meritor is working with experts in order to 4 investigate the reductive capacity of the PRB – 5 which is far west of the neighborhood, nothing to 6 do with the neighborhood – to meet the dispute 7 with the EPA. 8 THE COURT: All right. Let me just – 9 Mr. Liston, go ahead. 10 MR. LISTON: Your Honor, the – a number 11 of these reports, all of the annual monitoring 12 reports that are listed in here, work summaries 13 and other – others of them – if we – if we care 14 to stop and let us go through the files in our 15 computers – deal with monitoring wells and other 16 issues that involve the permeable reactive barrier 17 or PRB, which was the sole remedial structure 18 built at the Grenada facility and was, under the 19 plan devised by Meritor, supposed to solve all of 20 the groundwater issues at the site. It is a 21 critical piece of the entire puzzle out there and 22 it can't be plucked out. It didn't work for one 23 thing and that's part of the problem out there and 24 part of the reason that – that the current 25 activities are taking place. So for</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. COUGHLIN: It – it has to do 2 with – we didn't necessarily want to talk them 3 about it. We had no idea what's in their files. 4 They said, well, we just – we've withheld a whole 5 bunch of our files. They said, that's work 6 product, that's another case. Well, the inference 7 is it's dealing with the PRB, because it's the 8 sole receptor at Riverdale Creek. 9 But in terms of what are the issues in 10 this case concern whether the groundwater under 11 the neighborhood, which is east – well east of 12 the PRB, and the groundwater flows this way, are 13 causing or con- – whether something at the PRB is 14 causing or contributing to the issues in the 15 neighborhood. They're simply not. And no one is 16 going to be opining on that. Not even their 17 experts are opining on that. So this sort of 18 throwing open the doors and you get to look at 19 everything – the Rule is very clear, Your Honor, 20 it's – it's with regards to facts or data 21 considered in forming the opinions to be 22 expressed. It's not forming any and all 23 opinions – sorry, Bill, if you didn't hear 24 that – but forming the opinions that are going to 25 be expressed in the litigation.</p>
<p style="text-align: right;">Page 43</p> <p>1 Mr. Coughlin to say that it has nothing to do with 2 this lawsuit is misleading to be charitable. 3 THE COURT: All right. The – 4 MR. COUGHLIN: Your Honor, may I mention 5 one other fact? 6 THE COURT: You may. 7 MR. COUGHLIN: Counsel – plaintiffs' 8 counsel also represents the State of Mississippi, 9 the Attorney General State of Mississippi, with 10 regards to a groundwater, surface water litigation 11 filed against Meritor and the other defendants in 12 this case. This would be work product with 13 regards to that issue because that – and the 14 plaintiffs in this case, plaintiffs' counsel, have 15 restricted our ability to seek discovery in 16 depositions, shutdown portions of depositions, 17 when we've asked their experts about modeling work 18 or other work they have done with regards to 19 things like the PRB or the site saying, well, 20 that's for another case, that's work product, you 21 can't inquire into it. This is the same thing. 22 THE COURT: Well, why would you tell me 23 that PRB has nothing do with this case and then 24 tell me you wanted to talk to the plaintiffs' 25 experts about it?</p>	<p style="text-align: right;">Page 45</p> <p>1 THE COURT: I understand, Mr. Coughlin, 2 and according to you, Mr. Peebles will be talking 3 about 6,000 plus megabytes of other information as 4 an expert witness in this case. I did not do the 5 designation. You did. Now, you want to tell me 6 it doesn't mean what it says. 7 MR. COUGHLIN: No, Your Honor. What I'm 8 saying is, his opinions in the reports are not 9 formed or do not concern the efficacy of the PRB 10 and reductive capacity and the testing – pilot 11 testing going on out there. 12 THE COURT: All right. 13 MR. LISTON: Your Honor, the number – 14 THE COURT: Yes. 15 MR. LISTON: – pert- – Document I on 16 the disclosure is the corrected measures predesign 17 investigation report. It's Document No. I – 18 THE COURT: Yes. 19 MR. DEAS: – that's identified. That's 20 the document whereby Meritor justified building 21 the PRB. 22 THE COURT: I appreciate it and I 23 intend – I expect for you to tell me as we go 24 through this today, because I haven't had the 25 benefit of seeing all of those documents. The –</p>

12 (Pages 42 to 45)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 46</p> <p>1 you know, the issue, Mr. Coughlin, is whether or</p> <p>2 not this information will ever see the light of</p> <p>3 day in a courtroom, because it is or is not</p> <p>4 relevant to something that is really at issue in</p> <p>5 this case is one matter, and one matter upon which</p> <p>6 I am not ruling today. What I am considering is</p> <p>7 whether or not this is related to what you have</p> <p>8 designated him on. The fact that you designated</p> <p>9 him on stuff you apparently don't really intend to</p> <p>10 have him testify about is something different.</p> <p>11 But, again, you're the architect of this.</p> <p>12 All right. So that -- so the Court's</p> <p>13 ruling is that 17 comes in. It's several pages.</p> <p>14 I say comes in; does not come in. 17 will be</p> <p>15 subject to production to plaintiffs' counsel given</p> <p>16 that Mr. Peeples is a participant and the matters</p> <p>17 that we have discussed, both that he is a</p> <p>18 non-retained expert as well as the fact that his</p> <p>19 designation itself is so broad as to cover matters</p> <p>20 that are -- relate to things that are being</p> <p>21 discussed in 17.</p> <p>22 That brings us to 21. And these are, as</p> <p>23 I appreciate it, Mr. Peeples' notes of work being</p> <p>24 done there at the site. And I would say with</p> <p>25 respect to it, the Court had the same -- is</p>	<p style="text-align: right;">Page 48</p> <p>1 that, as I've said before, he is a non-reporter on</p> <p>2 all of this subject matter, and so in the Court's</p> <p>3 view, because of the designation and its breadth,</p> <p>4 this is going to be produced. And furthermore --</p> <p>5 well, I'll just leave it at that.</p> <p>6 The next one is 22. Here. Let's see.</p> <p>7 All right. These are notes, again, as I</p> <p>8 appreciate it, of Mr. Peeples' discussing the</p> <p>9 environmental condition out at the site and the</p> <p>10 need to do samples and again the PRB.</p> <p>11 MR. COUGHLIN: Again, Your Honor, these</p> <p>12 are phone notes with a lawyer from Thompson Hine.</p> <p>13 THE COURT: Meaning exactly -- I mean,</p> <p>14 that's true. I don't disagree with that, but that</p> <p>15 alone doesn't answer the question under either</p> <p>16 work product or attorney/client privilege. Your</p> <p>17 position is the same with regard to this one as it</p> <p>18 was with 21?</p> <p>19 MR. COUGHLIN: That it does not fall</p> <p>20 into one of the three exceptions in Rule 26.</p> <p>21 THE COURT: Okay. All right. 23. I</p> <p>22 think we have the same situation here. Is your</p> <p>23 argument the same?</p> <p>24 MR. COUGHLIN: Is this --</p> <p>25 MR. HUBBARD: It's a continuation.</p>
<p style="text-align: right;">Page 47</p> <p>1 inclined in the same -- same way. This is -- like</p> <p>2 discussing all mapping active wells. Wells are</p> <p>3 something that's definitely being discussed in</p> <p>4 these various reports that are attached as Exhibit</p> <p>5 F.</p> <p>6 MR. COUGHLIN: Your Honor, these are</p> <p>7 phone notes from Mr. Peeples' discussions with an</p> <p>8 attorney at Thompson Hine, these are not his own</p> <p>9 little internal notes, and, therefore, we believe</p> <p>10 fall under the restrictions of communications with</p> <p>11 counsel as to what is and what is not discoverable</p> <p>12 under the Rules.</p> <p>13 THE COURT: When you say what is and</p> <p>14 what is not, under what rule? You're referring</p> <p>15 now to Rule 26 --</p> <p>16 MR. COUGHLIN: Correct --</p> <p>17 THE COURT: -- the work product --</p> <p>18 MR. COUGHLIN: -- Your Honor.</p> <p>19 THE COURT: -- or are you referring to</p> <p>20 attorney/client privilege?</p> <p>21 MR. COUGHLIN: I'm referring to</p> <p>22 attorney/expert communication.</p> <p>23 THE COURT: Under Rule 26?</p> <p>24 MR. COUGHLIN: Correct, Your Honor.</p> <p>25 THE COURT: All right. Well, as to</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. COUGHLIN: 23 is a continuation.</p> <p>2 THE COURT: It is a continuation. It</p> <p>3 is, but it is a separate document, so just to keep</p> <p>4 things clear, let's -- since it's on the privilege</p> <p>5 log separately.</p> <p>6 MR. COUGHLIN: Our position is the same,</p> <p>7 Your Honor, in that it is not conveying facts,</p> <p>8 data or assumptions.</p> <p>9 THE COURT: All right. And the Court's</p> <p>10 position is the same, that he's been designated as</p> <p>11 a non-reporter and also our previous discussion of</p> <p>12 the breadth of that designation.</p> <p>13 24. This -- I don't know that the log</p> <p>14 tells us exactly who all of the these people are,</p> <p>15 but perhaps it does.</p> <p>16 MR. COUGHLIN: I can shed some light on</p> <p>17 that, Your Honor. This is a May 10, 2017 phone</p> <p>18 call with Heidi Friedman, one of my partners, as</p> <p>19 well as Joel and I would be the Tim.</p> <p>20 THE COURT: All right. And these are</p> <p>21 Mr. Peeples' notes?</p> <p>22 MR. COUGHLIN: Correct, Your Honor.</p> <p>23 THE COURT: All right. And these look</p> <p>24 to me to contain discussions of samples and wells</p> <p>25 and because Mr. Peeples is a non- -- designated as</p>

13 (Pages 46 to 49)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 50</p> <p>1 a non-reporting expert on – as we've discussed, 2 in all manner of things on Exhibit F, it's appears 3 to the Court, and I will so rule, short of you 4 coming up with a different argument than you've 5 previously made, that this will be produced. 6 MR. COUGHLIN: And, Your Honor, we 7 will – we understand your ruling, but we believe 8 that this is privileged and not subject to any of 9 the three exceptions to the attorney/expert 10 privilege set fourth in Rule 26. 11 THE COURT: All right. And 25. Again, 12 this is a like – a note of like type, we'll say 13 that, and the Court's concern about it and 14 feelings about it is as I have previously 15 articulated, and I think defense counsel amply 16 understands, and I understand defense counsel's 17 position. I just need you to tell me, is it the 18 same for this document? 19 MR. COUGHLIN: Our – this is also work 20 product, Your Honor, because this is dealing with 21 the efficacy of the study concerning the PRB and 22 communications with a consulting expert concerning 23 that process. So in addition to the Rule 26 24 expert/attorney privilege, this doesn't fall under 25 any of the three exceptions. This also has work</p>	<p style="text-align: right;">Page 52</p> <p>1 some state of facts in 2004, why wouldn't the 2 other side want to know what those facts are now 3 to cross-examine him on what those statements 4 were? But I'll defer to defense counsel – I 5 mean, to plaintiffs' counsel to articulate on the 6 record why this information would be related to 7 the information that's shown on Exhibit F. 8 MR. DEAS: Well, Your Honor, the 9 corrective measures predesign investigative 10 results report, listed as Item 1 on Exhibit F, was 11 the beginning of a process that led to then the 12 corrective measures study, then the corrected 13 measures post-design study or post-design 14 investigation and a number of subsequent things 15 that were – that were done, reported on and filed 16 with regulators, all of which involved this 17 particular expert leading up today, all of which, 18 you know, the results of and inefficacies of which 19 have led to the – frankly, the listing of the 20 site on the National Priority – or the proposed 21 listing of the site on the National Priorities 22 List. 23 THE COURT: All right. 24 MR. DEAS: The – the involvement of 25 Mr. Peebles in designing that particular</p>
<p style="text-align: right;">Page 51</p> <p>1 product implications and privileges attached to 2 it. 3 THE COURT: All right. Again, 4 Mr. Liston, the – Exhibit F contains documents 5 that reflect opinions and information about the 6 PRB. 7 MR. LISTON: Yes, Your Honor, it does. 8 Document 1 in Exhibit F concerns the PRB. 9 THE COURT: Okay. All right. 10 MR. COUGHLIN: Your Honor. 11 THE COURT: Yes. 12 MR. COUGHLIN: I guess I might – I have 13 a little confusion in terms of they're talking 14 about a 2008 document as the basis for this. This 15 is a 2017 phone note, which has nothing do with 16 what's actually in the 2008 document. And so it's 17 the Court's position that a document nine years 18 later that deals with a different subject matter 19 of the PRB is somehow considered by the expert in 20 forming his or her opinion? 21 THE COURT: Well, as to a non-reporting 22 expert, I think the Rule is what was referred to 23 as the bright-line rule. In your – but even so, 24 I – yes, I do think so. If, for example, you 25 have an expert and he's going to testify as to</p>	<p style="text-align: right;">Page 53</p> <p>1 corrective measure and his knowledge about what 2 went wrong is absolutely relevant to what the 3 plaintiffs are trying to prove. 4 THE COURT: I'll ask this – and I won't 5 continue to ask these kind of questions again and 6 again. But just for the record, assume that 7 Mr. Peebles did in fact do what his expert 8 designation says he's going to do and he got up on 9 the stand and insofar as PRB is concerned he 10 recited everything from the stand that is in 11 Exhibit F and everything that concerns the PRB 12 that appears in any of the 18 documents on Exhibit 13 F, if you assume that, are – is this information 14 as concerns PRB related to that testimony? 15 MR. DEAS: Well, Your Honor, I'm at a 16 decided disadvantage to everyone else in the room 17 because I can't see what's on the sheet. All I've 18 got is a big redacted mark over it. 19 THE COURT: All right. 20 MR. DEAS: Because I promised not to 21 look at it again once they sent a clawback letter. 22 THE COURT: All right. 23 MR. DEAS: But assuming that it's 24 something about the PRB in 2017, about the fact 25 that it doesn't work, which everybody here knows</p>

14 (Pages 50 to 53)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 54</p> <p>1 it doesn't, and that they're trying to make it 2 work or deciding they -- I did read these 3 documents once -- that they're deciding to make it 4 work or not try to make it work or whatever that 5 might be. Document No. 14, which is this database 6 that Mr. Coughlin mentioned earlier -- 7 THE COURT: Right. 8 MR. DEAS: -- contains every testing 9 result from every well, soil gas test, groundwater 10 study or any other kind of environmental testing 11 event that's occurred on the site done by Meritor, 12 by Textron, by the plaintiffs, by the EPA, by the 13 State through this entire period, as I understand 14 it. 15 THE COURT: I understand. All right. 16 MR. DEAS: So to the extent that -- that 17 he's going to testify about those results, you 18 know, and how the PRB failure has -- has impacted 19 them, that's important. There's also, as I recall 20 in these documents, from reading them, a statement 21 somewhere around 2013, in what's been redacted 22 since this hearing is sealed, a statement that you 23 might have ruled is going to be produced that 24 said, perhaps the groundwater that's being pushed 25 into the neighborhood that's contaminated is being</p>	<p style="text-align: right;">Page 56</p> <p>1 whether it's relevant to our claims in this case 2 and basically rewrite our decision for us and then 3 let us stand behind the protection and, you know. 4 I don't think that's the Court's place to do, and 5 I think -- I think, again, that's why -- I think 6 that's the problem that we've got. 7 MR. COUGHLIN: Your Honor, I understand 8 the broad scope of expert discovery under Rule 26, 9 but it all has to be framed on what the claims are 10 in the litigation. There is not a single expert 11 opinion that anything to do with the PRB has 12 caused anything in the neighborhood. The document 13 that Mr. Deas is talking about is a 2008 document 14 that says it was installed in 2004, 2005. It has 15 nothing to do with -- it's just -- it's there in 16 the text. It's historical. The reason they want 17 to deal with it has something to do with a totally 18 different part of the material. I understand the 19 Court's concern, and I understand the breadth of 20 it. If you want to include everything about the 21 PRB, all of that will be subject to motions in 22 limine, and that's fine, and we can proceed a pace 23 so that we don't get bogged down in that. But 24 I'm -- I'm asking the Court now to understand that 25 this case is going to boil down to who may have</p>
<p style="text-align: right;">Page 55</p> <p>1 pushed into the neighborhood because the PRB has 2 failed and water can no longer flow through it 3 properly and that's changed the groundwater flows 4 in the region. That's pertinent. That's 5 pertinent to our lawsuit, to our trespass lawsuit 6 and to a pathway, which -- frankly, our experts 7 should have had this information back in the 8 summer so it could have informed their decision. 9 They didn't. We're living with it. But to say it 10 doesn't have anything to do with it, is -- is 11 disingenuous. 12 THE COURT: Well, I mean, you know, I 13 agree that if you designate an expert on top -- a 14 bunch of topics and -- but you don't really 15 mean -- you don't intend to actually call him on 16 any of those, because you don't really think 17 they're relevant, but you designate him on them, 18 then I -- I don't think it's fair for you to then 19 step up at this hearing and say, well, yeah, we 20 designated him to testify about how the PRB 21 performed in that report or in the EQuIS database, 22 all of the testing results from it, but we 23 don't -- we don't think that's really relevant to 24 our claims in this case, we just -- we just 25 designate him like that. You should find out</p>	<p style="text-align: right;">Page 57</p> <p>1 deposited TCE east of the railroad tracks over in 2 the Moose Lodge Road area. It has nothing to do 3 with a mile away at the PRB. This is all 4 discovery about discovery, and at the end of the 5 day, we're spending a lot of time on something 6 that truly, under the rules, under the amendments 7 to the rules as to -- it doesn't matter if it may 8 lead to the discovery of admissible evidence 9 anymore. The question is with regard to the 10 burdens, is this something that really matters in 11 the case? And it doesn't. 12 THE COURT: Well, I -- I think the issue 13 is whether or not this relates to matters on which 14 this expert has been designated to give testimony. 15 I don't know why you might have designated him on 16 various subjects. I don't know what the theory 17 might have been at the time, whether the theory 18 has changed. You know, I don't know why you 19 did -- you chose to designate him on things that 20 you're now telling me don't have anything to do 21 with this litigation. 22 MR. COUGHLIN: We never designated him 23 on the efficacy of the PRB. (Indiscernible 24 cross-talk) -- 25 THE COURT: But you designated him on</p>

15 (Pages 54 to 57)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 58</p> <p>1 everything that is said about the PRB in any of 2 those 18 documents. There's no question about 3 that. 4 MR. COUGHLIN: And if it says something 5 about the efficacy of the PRB, I'll live with your 6 understanding, Your Honor. But if it merely says 7 the PRB was installed in 2004, 2005, that -- from 8 a historic standpoint, that shouldn't throw open 9 the doors to every single scrap or e-mail 10 discussion about the PRB. 11 THE COURT: Well, if Mr. Peeples got up 12 on the stand and said it was -- ladies and 13 gentlemen, we put this in in 2004 and the reported 14 results were 16 and sat back, don't you think the 15 defense would be entitled to say, now, you just 16 said it was put in as if it did a really great 17 job, now tell me what it was the next year, now 18 the next year and the next year. 19 MR. COUGHLIN: Your Honor, I think 20 Mr. Hubbard would kick me if I would have asked -- 21 or would ask that question because it has nothing 22 do with the claims in this case. 23 THE COURT: Well, nobody kicked you when 24 you designated him to say those things. 25 MR. COUGHLIN: But I --</p>	<p style="text-align: right;">Page 60</p> <p>1 THE COURT: All right. Is any aspect of 2 that discussed in any of the 18 reports that are 3 attached as Exhibit F? 4 MR. DEAS: I'm sure there's probably 5 information about the -- those reports included in 6 the database. I don't know for certain. Without 7 pulling it up, I would imagine that's included in 8 the AOCA investigation report table somewhere. 9 And, again, Your Honor, I'm operating at somewhat 10 of a disadvantage because I can't see the text as 11 to what was discussed. Perhaps the data gap work 12 summary -- and I'm not certain. Perhaps Phillip 13 or Barber or Tim or Bill would remind me what the 14 subject matter was of the April 29th, 2016 letter 15 from Trudy Fisher. 16 MR. COUGHLIN: Those contained two 17 interactive PDF groundwater modeling. 18 MR. DEAS: But there was a letter. 19 MR. COUGHLIN: Well, the letter just 20 attaches them, so... 21 MR. DEAS: Does it -- okay. So those 22 would be the ones that I believe I'd point to, 23 Your Honor. 24 MR. COUGHLIN: Your Honor, AOCA, the 25 designated report, deals with groundwater</p>
<p style="text-align: right;">Page 59</p> <p>1 THE COURT: Okay. All right. Let's 2 keep going. Well, I'll try to pick up the pace 3 unless anybody has an objection. 4 MR. LISTON: Your Honor, excuse me. 5 THE COURT: Yes. 6 MR. LISTON: Did you rule on No. 25? 7 THE COURT: If I did not, let me do so. 8 The arguments, as the Court appreciates them, were 9 the same on 25 as they have been on the prior 10 exhibits, and the Court's ruling is the same, that 11 is that document will be produced. 12 27. Let's see. Let me just reference 13 what 27 looks like. Okay. These -- again, 14 these -- it's the same situation. These are 15 Mr. Peeples' notes talking about ambient air 16 quality and sampling and Arcadis. And, again, the 17 Court's feeling about this is the same, unless you 18 want to argue that this is unrelated to anything 19 that's in the 18 reports. 20 MR. COUGHLIN: It is, Your Honor. This 21 has to do with the vapor intrusion study inside 22 the four walls of the Grenada Stamping Plant, and 23 that is what this concerns in terms of a dispute 24 with the MDEQ and the EPA regarding ambient air 25 inside and only inside the facility.</p>	<p style="text-align: right;">Page 61</p> <p>1 investigation, not ambient air investigation. 2 This note talks about a pilot study for ambient 3 air inside the facility. 4 UNIDENTIFIED SPEAKER: (Indiscernible.) 5 MR. COUGHLIN: And as -- 6 MR. DEAS: Your Honor, AOCA is the pool 7 of liquid TCE that underlies the facility that is 8 the source of whatever is bubbling out of the 9 ground into the facility. I don't know how one 10 would be completely separated from another 11 logically or factually. 12 MR. COUGHLIN: If I may finish, Your 13 Honor. 14 MR. DEAS: Sorry to cut you off. 15 MR. COUGHLIN: Mr. Deas noted the EPA 16 has proposed listing of the site property, not the 17 neighborhood, but the site property on the NPL and 18 did so because of vapor intrusion inside the 19 facility, not anything in the neighborhood, not 20 anything anywhere else. It's vapor intrusion in 21 the facility. This is the work product between 22 discussions with Mr. Peeples and counsel at 23 Thompson Hine about meeting the objections of the 24 EPA and dealing with them and how is it that we 25 demonstrate that they're wrong. And this --</p>

16 (Pages 58 to 61)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 62</p> <p>1 again, it's not ambient air in the neighborhood. 2 It's not anything to do with the groundwater. 3 It's what do you do and how do you test the indoor 4 ambient air inside the Grenada Stamping Plant? 5 Again, it is not something that Mr. Peeples – 6 there is nothing in the 18 that deal with this. 7 The ambient air sampling data is not part of 8 No. 14, the database. That's groundwater testing 9 and soil gas testing. 10 MR. DEAS: Your Honor, could I ask who 11 the participants in the phone call were? I'm not 12 privy to that information either. 13 MR. COUGHLIN: It's a call with Thompson 14 Hine. I'd have to go back and look. My 15 supposition is that it's Heidi Friedman and Joel 16 Eagle since it's call with TH, RE: Interim 17 measures. 18 MR. DEAS: Okay. 19 THE COURT: Well, again, my question is, 20 does this relate to any matters that are discussed 21 in any of the 18 documents, because I'm 22 assuming – and, again, I'm assuming for these 23 rulings that Mr. Peeples is intended by the 24 defendants to take the stand and regurgitate 25 what's in the 18 exhibits.</p>	<p style="text-align: right;">Page 64</p> <p>1 reports and government records including opinions, 2 analysis and data therein contained on Exhibit H. 3 What is on Exhibit H? I've not seen Exhibit H. 4 MR. DEAS: It's the defendants' Exhibit 5 H? 6 THE COURT: It's defendants' Exhibit H 7 to their designation of experts. 8 MR. SYKES: Your Honor, we're 9 (indiscernible) – 10 THE COURT: Pardon? 11 MR. SYKES: Can we look at it? 12 THE COURT: Sure. Absolutely. 13 MR. SYKES: (Indiscernible cross-talk.) 14 THE COURT: Yeah, take your time. 15 MR. COUGHLIN: Your Honor, while they're 16 doing that, again, the 18 documents – again, one 17 of them is a database of sampling data – do not 18 concern ambient air. Your Honor raised the issue 19 of Arcadis. Arcadis did a vapor intrusion study 20 in six homes in the neighborhood and rendered a 21 report that we've identified. This is a totally 22 separate piece of work. This is dealing – as 23 these notes identify, this is dealing with inside 24 the plant, not the neighborhood. 25 THE COURT: I understand. You know, I</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. DEAS: The title, Your Honor, says, 2 call with Thompson Hine, RE: IMs, which in the 3 pollets of this case means interim measures, which 4 is everything short of a final measure done 5 environmentally on the site at Grenada. That is 6 the subject matter of these 18 documents. And I'm 7 listening to Mr. Coughlin characterize this as 8 being something separate, but as we spoke out in 9 our briefing, Mr. Peeples was the chief 10 environmental scientist in charge of all remedial 11 and environmental work on the site as a whole for 12 over a decade and they designated him as an expert 13 basically on most major filings made or many major 14 filings – I think most is an overstatement – 15 during that decade and, sure, it has something to 16 do with it. I don't even know how you separate 17 it – how you separate it out. It's about the 18 contamination, you know, trying to classify it 19 solely as a – again, I – I can't see it, so... 20 THE COURT: All right. I asked you 21 earlier about Exhibit G to Mr. Ellis' designation. 22 Let me ask you now about Exhibit H, because the 23 defendant has designated – appears to designate 24 the entire Environmental Protection Agency on the 25 general nature of the environmental studies and</p>	<p style="text-align: right;">Page 65</p> <p>1 understand air travels too. I'm not suggesting it 2 did in this case. But I hear what you're saying. 3 But my question really is not that. It is whether 4 or not this relates to anything that is – appears 5 on Exhibit F or, for that matter, Exhibit H? 6 MR. COUGHLIN: It does not with regard 7 to Exhibit F. Mr. Deas' comment, well, it must 8 concern something, to me demonstrates it doesn't 9 concern anything. If he cannot articulate – 10 because we can go through one by one and I can 11 tell you what they deal with, and we have laid out 12 the exact opinions in them in our e-mail to 13 Mr. Deas because they're set forth in the summary 14 and conclusions in each report. None of them deal 15 with ambient air sampling or a remedial method 16 with regards to ambient air inside the Grenada 17 Stamping Plant facility. 18 MR. DEAS: Your Honor, this is the same 19 argument he was making with regard to the PRB. 20 It's just bent in a different direction. He's 21 saying that since none of these deal with the – 22 you know, remediating the PRB, information about 23 remediating the PRB must not be relevant to any of 24 these documents. He – it – they're talking 25 about testing air in the plant, because the</p>

17 (Pages 62 to 65)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 66</p> <p>1 groundwater contamination under the plant is 2 leeching out in the soil, then all of the 3 information about the groundwater con- -- or all 4 of the reports about the groundwater contamination 5 under the plant are necessarily related to the 6 stuff that's bubbling up from it. It's -- he's 7 creating a remove where none actually exists. And 8 if there's a difficulty I'm having, it's that I 9 don't actually know what we're fighting about, so 10 I am -- I'm having this discussion with both hands 11 tied behind my back. 12 THE COURT: Well, he's giving you -- 13 he's giving you a -- A, you've read it before. 14 MR. DEAS: But I'm not that -- I don't 15 have that good of a memory, Your Honor. 16 THE COURT: I understand. 17 MR. DEAS: I don't know what this page 18 says. 19 THE COURT: But the general subject, 20 together with what he's representing it to be, 21 that it is related to testing air inside of a 22 building there on the manufacturing site; is that 23 right? 24 MR. COUGHLIN: Correct, Your Honor. 25 THE COURT: All right. And your</p>	<p style="text-align: right;">Page 68</p> <p>1 refers to AOCA, which is the big contamination 2 plume that still lies underground at plant 3 property, and so what -- if this documents 4 reflects air issues in the plant, it is a 5 consequence of the same problem the neighborhood 6 is experiencing. 7 THE COURT: Okay. 8 MR. SYKES: That's simply not true. 9 UNIDENTIFIED SPEAKER: That's debated. 10 THE COURT: Yeah. And I -- I understand 11 it's debated, but the fact that it's debated, you 12 know -- it doesn't even matter. What matters is 13 whether or not it is related to something that's 14 in that exhibit, whether it ultimately is relevant 15 or not relevant to the case. One would presume 16 it's relevant just because you would wonder why 17 you would designate somebody on a subject that's 18 not relevant. 19 MR. COUGHLIN: If I would have 20 designated him as an air expert, we could be 21 talking about this. He's not. He's a groundwater 22 expert -- 23 MR. LISTON: May -- 24 MR. COUGHLIN: -- and -- and because of 25 that, you know, we have -- all of this</p>
<p style="text-align: right;">Page 67</p> <p>1 argument is, well, if it's bad inside the 2 building, it's coming from somewhere and it might 3 be coming from the same place that's causing the 4 ambient air problem over here in the next 5 neighborhood. 6 MR. DEAS: I -- 7 MR. LISTON: Well -- Your Honor, may I 8 speak to that? 9 THE COURT: You may. 10 MR. LISTON: On this issue of the site 11 being proposed for the MPA, all of the EPAs issued 12 you documents. And the way I read those documents 13 is they believe that these -- this source, same 14 source, that's, you know, contributing to the air 15 quality inside the plant is polluting all -- is 16 polluting the air all the way up Moose Lodge Road 17 as far as the Kirk property which lies on an equal 18 plane with the neighborhood. So the new EPA 19 thought and all of the stuff that's leading up to 20 the NPL is that it's the same source. 21 THE COURT: So you are telling me that 22 this is -- if it -- if it relates to the air 23 quality inside this building, that it is related 24 to some matter that is contained in Exhibit F? 25 MR. LISTON: Well, I know Exhibit F</p>	<p style="text-align: right;">Page 69</p> <p>1 supposition. The plaintiffs' counsel would have 2 to agree that they do not have an air expert who 3 renders an -- an opinion, let alone an admissible 4 opinion, that the ambient air in the neighborhood, 5 whatever level there might be, is -- is from the 6 facility. They don't have an opinion. And -- 7 MR. LISTON: Well -- 8 MR. COUGHLIN: -- and none of our 18 9 reports address the indoor air at the facility. 10 THE COURT: Do they address the air 11 anywhere in the area? 12 MR. COUGHLIN: They address the ambient 13 air in and around the homes as did the EPA. The 14 EPA did a vapor intrusion analysis study in the 15 neighborhood and said it isn't from the 16 groundwater, and there is no source identification 17 as to where it's from. 18 THE COURT: Is that EPA study one of the 19 ones that you've designated the EPA on? 20 MR. COUGHLIN: Yes. It's a fact sheet. 21 THE COURT: Okay. All right. Well, 22 this is coming in -- I mean, not coming in. 23 Again, let me stand corrected. I'm going to allow 24 this as related to matters on which non-reporting 25 experts have been designated.</p>

18 (Pages 66 to 69)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 70</p> <p>1 MR. COUGHLIN: But he hasn't been 2 designated on this. 3 THE COURT: He's been designated on the 4 subject of the air quality in the neighborhood, 5 which, as I appreciate it, is – the argument is 6 it is related to the air quality – you know, the 7 same way the air quality in this building may have 8 some relevance to air quality in the next 9 building. The question is, is it related to, not 10 whether it's relevant, not whether you intend to 11 argue it at trial. You designated him to say 12 something about the air quality. 13 MR. COUGHLIN: No, we didn't. There's a 14 slip between the cup and the lip. There is 15 nothing in the 18 reports about air quality in the 16 neighborhood by Mr. Peeples. 17 THE COURT: Well, what about the EPA 18 report? 19 MR. LISTON: Yeah. 20 MR. COUGHLIN: The EPA – if you want 21 internal EPA communications, that's fine. But 22 this is a conversation with lawyers concerning 23 inside the facility, not the neighborhood. This 24 is work product. 25 THE COURT: All right. I understand</p>	<p style="text-align: right;">Page 72</p> <p>1 related. 2 MR. COUGHLIN: It's not. 3 THE COURT: All right. 4 MR. COUGHLIN: This is ambient air 5 inside the plant. It's as though you hooked up 6 monitors inside this room to study what was in the 7 air in this room, not that you drilled down under 8 the foundation to find out whether there's soil 9 gas. It's two totally different things. 10 THE COURT: All right. And I appreciate 11 that argument. Again, the Court's ruling with 12 regard to this document will be as I have 13 previously ruled and you can take up the matters 14 of its relevance or non-relevance down the road. 15 Again, my only concern is whether or not it 16 relates to anything that's in any of these – or 17 in this designation. Okay. 18 MR. HUBBARD: That was 28? 19 MR. COUGHLIN: 27. 20 THE COURT: 28 is the next one. Is 21 that – it's a continuation of the previous page. 22 Let me see. Just for purposes of completeness, 23 let me just see if it looks like it's – is this a 24 discussion of the same thing, Mr. Coughlin? 25 MR. COUGHLIN: Let me check, Your Honor.</p>
<p style="text-align: right;">Page 71</p> <p>1 your argument. I think because of the breadth of 2 this designation – and, in fact, if I understood 3 you correctly, Exhibit F does contain information 4 about the air quality in the neighborhood. 5 MR. LISTON: Exhibit F contains 6 information about the groundwater plume that's 7 polluting the air. Exhibit G, which you're 8 referring to, the EPA materials, include all of 9 these EPA fact sheets that they've used throughout 10 the course of this case that address the air 11 quality in the neighborhood, the existence of TCE 12 vapor in that air and what if any sources there 13 are for that. Those are all issues that are 14 included within their broader designation. 15 MR. DEAS: Further, Judge, when I 16 deposed on the few documents that we were 17 permitted to depose Mr. Peeples on last week, one 18 of those, contrary to Mr. Coughlin's 19 representation a minute ago, was a document – an 20 e-mail about pathways, which the Court may 21 remember reviewing. When asked what kind of 22 pathway he was looking at, he said, a soil gas 23 pathway. And that soil gas pathway was from the 24 plant to the neighborhood. That's precisely where 25 this study is being conducted. That's at least</p>	<p style="text-align: right;">Page 73</p> <p>1 It is. It's for the indoor ambient air study 2 parameters inside the facility dealing with the 3 issues with the EPA. 4 THE COURT: Okay. 5 MR. COUGHLIN: And we'll stand on our 6 same position with regard to 28. 7 THE COURT: All right. 29, handwritten 8 notes with counsel, proposal to be submitted and 9 access to adjacent property. That doesn't tell us 10 much. All right. Give us a better idea what this 11 document is, Mr. Coughlin. 12 MR. COUGHLIN: These are communications 13 between Mr. Peeples and counsel at Thompson Hine 14 concerning his work, the means and methods of it, 15 which find themselves in – ultimately in the 16 reports, but do not relay facts, data or 17 assumptions, which are the only three exceptions, 18 along with compensation, under Rule 26. 19 THE COURT: All right. And the Court's 20 ruling will be the same on that document. And I 21 understand counsel's argument. 22 MR. COUGHLIN: And 20 – and 30 is – is 23 the same thing – it's – 24 THE COURT: All right. We'll – 25 MR. COUGHLIN: – it's the next note.</p>

19 (Pages 70 to 73)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 74

1 again with Thompson Hine.
2 THE COURT: Thank you, Mr. Coughlin.
3 And for the record, the Court's ruling will be the
4 same; that document will be produced over the
5 objection of defendant as has been articulated.
6 Let's see. The next one, y'all, is --
7 it looks like it's 31. And these are -- again,
8 this is -- I'll let you characterize it,
9 Mr. Coughlin. Is this the same situation as the
10 last document?
11 MR. COUGHLIN: These are different, Your
12 Honor. These are phone notes with Joel Eagle from
13 Thompson Hine in March of 2017, again, dealing
14 with the investigation work concerning the PRB.
15 And I do need to correct Mr. Deas' representations
16 to the Court. The PRB does work. The question is
17 the efficacy of it and that is what is being
18 researched. And, again, that's -- I would
19 represent to the Court that there is nothing in
20 the 18 documents dealing with the efficacy of the
21 PRB upon which Mr. Peebles has formed an opinion.
22 THE COURT: All right. I understand.
23 And I've heard de- -- plaintiffs' counsel on this
24 point. I think I've heard both of y'all
25 sufficiently on the PRB, and I'm going to allow

Page 75

1 this to be produced on the basis that the subject
2 of the PRB is the subject of the non-reporting
3 expert's 18 documents that he's going to testify
4 about, at least related to.
5 And the next one is 32. And let's see.
6 32 is Peebles' conversation with Michael Caples,
7 Meritor counsel, regarding information by Caples.
8 That seems very vague.
9 MR. COUGHLIN: Your Honor, if you go to
10 the top of 1469, it talks about the Kirk PCA
11 report, which is one of the reports in this matter
12 that we have identified Mr. Peebles as a
13 report-generating expert on. These are comments
14 and communications concerning the drafts of that
15 report which should be privileged under the Rule,
16 as the draft should be privileged under the Rule.
17 THE COURT: All right. And I don't
18 disagree with reporting expert so far. But since
19 he's been designated as a non-reporting expert,
20 the Court's ruling is the same.
21 MR. COUGHLIN: Oh, Your Honor --
22 THE COURT: Yes.
23 MR. COUGHLIN: -- my research regarding
24 these issues that have come up reveals that even
25 drafts of non-reporting expert opinions are --

Page 76

1 well, draft reports by non-reporting experts are
2 privileged under Rule 26.
3 THE COURT: I don't disagree with that,
4 but how do you see this as a draft of that?
5 MR. COUGHLIN: This is the communication
6 concerning what's going into the draft or comments
7 on the draft.
8 MR. DEAS: Your Honor, there's a
9 difference between notes and memoranda and studies
10 and facts and the actual draft report of an
11 expert, and there's plenty of case law out there I
12 could cite to the Court and Mr. Coughlin making
13 that distinction.
14 MR. COUGHLIN: It --
15 THE COURT: Well, let me stop y'all
16 here, because I can tell you, from reading this,
17 that most of this there's -- it's no privilege
18 claim to it. It's only this small piece down at
19 the bottom of this conversation that a privilege
20 is claimed as to and the next page and the -- I'm
21 assuming this next page -- yeah, this is the
22 extension of that, and that in no way appears to
23 me to be a draft report and I ask you to look at
24 it and see if you can still represent that to me.
25 MR. COUGHLIN: These are comments on the

Page 77

1 draft report as to materials for -- I'm trying to
2 do this without waiving privilege. Contents and
3 revisions with -- to the report. If I may, Your
4 Honor, the Kirk PCA property is -- runs north and
5 south along the east side of the railroad tracks
6 that borders the eastern boundary of the
7 neighborhood, that there was extensive sampling
8 done by T&M, you know, for lack of a better
9 phrase, fence line sampling. They ran a series --
10 a large number of wells running north, south along
11 the back of the property line in the Kirk PCA area
12 to identify potential source areas for the
13 neighborhood groundwater plume, and they found --
14 they had found something back in 2015. This
15 further delineated exactly where it is. We know
16 where it is. It's in the rail yard. And that
17 report is one of the 18, one that Mr. Peebles
18 signed. It's called the Kirk PCA, I believe, and
19 it identifies the location of the source of the
20 groundwater plume in the neighborhood or further
21 refines the site. And so this -- these notes are
22 dealing with the reports. Now, I understand the
23 Court's position, and I hope you can understand
24 ours in terms of communications with experts
25 concerning draft reports.

20 (Pages 74 to 77)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 78</p> <p>1 MR. DEAS: Your Honor, draft reports 2 were never mentioned, until right now, in the 3 privilege log or elsewhere. 4 THE COURT: Well, yeah, that's certainly 5 true, but let me say, you know, I do agree with 6 you regarding draft reports. I do not agree with 7 you that this remotely looks like a draft report. 8 Furthermore, there's no date on it. I can't tell 9 if it even predated or postdated such said report 10 being published. But it says things -- I mean, 11 there's just -- this doesn't look like -- there's 12 no reference to a paragraph number, page number, 13 change this, I don't like that. This does not -- 14 I mean, we've all done edits to reports of drafts 15 before. There's nothing about this that looks 16 like an edit of a draft. At the very least, it is 17 highly ambiguous and that ambiguity will be 18 construed -- I just -- I just don't see it. I 19 don't even think it's ambiguous. I don't read 20 this at all to be a draft of a report. 21 MR. COUGHLIN: Again, Your Honor, it 22 is -- it is not a draft of a report. These are 23 phone notes of a conversation with a Butler Snow 24 counsel concerning comments on the report. 25 THE COURT: I hear what you're saying.</p>	<p style="text-align: right;">Page 80</p> <p>1 the same thing. We've been to this dance 2 before -- 3 MR. COUGHLIN: Yes, we are. We've -- 4 THE COURT: -- haven't we? 5 MR. COUGHLIN: -- we've gone around this 6 dance, but it -- 7 THE COURT: Okay. So, you know, I hear 8 your argument. I do not find that this is -- this 9 is a draft and I also, again, say that, as to the 10 extent it's communications about anything, it's 11 not a draft, but communications with counsel and a 12 designated non-reporter on a subject that you 13 clearly acknowledge he -- he's designated on. I'm 14 going to allow the production of it. 15 Okay. Let's see, y'all. Now, it's -- 16 it's about 12:25. I -- you know, I get in 17 something and I can -- I just keep going, so -- 18 but I understand that other people aren't like 19 that and that sometimes people have health issues, 20 they need to get something to eat. And I also 21 understand we have somebody here who indeed has a 22 health issue, as in the flu, which we all 23 appreciate you being here, Mr. Coughlin, to share 24 with us. 25 MR. COUGHLIN: I'd rather keep going,</p>
<p style="text-align: right;">Page 79</p> <p>1 I cannot -- I cannot in any way discern that. And 2 why -- if that's the case, why did you produce 3 half of it? 4 MR. COUGHLIN: It -- 5 THE COURT: Haven't you waived the 6 privilege by producing half of it -- 7 MR. COUGHLIN: It -- 8 THE COURT: -- twice? 9 MR. COUGHLIN: It appears that 10 Mr. Caples may only have come in at that point. 11 UNIDENTIFIED SPEAKER: (Indiscernible.) 12 THE COURT: I don't think this -- this 13 does not strike me as the report -- a draft of the 14 report that ultimately became one of the reports 15 on Exhibit F. I can't tell even when -- when this 16 was done. 17 MR. COUGHLIN: I would agree with Your 18 Honor's characterization that this is not a draft 19 of a report. This is communications with counsel 20 concerning a draft. If you look -- 21 THE COURT: To a non-reporting -- with a 22 non-reporting expert. 23 MR. COUGHLIN: And a report-generating 24 expert. 25 THE COURT: I understand. We're back to</p>	<p style="text-align: right;">Page 81</p> <p>1 Your Honor, because we have flights, which is more 2 important than food. 3 THE COURT: Okay. What time are your 4 flights? 5 UNIDENTIFIED SPEAKER: You're not going 6 to make it. 7 MR. COUGHLIN: We're not going to make 8 it? 9 UNIDENTIFIED SPEAKER: I mean, what time 10 are your flights? 11 UNIDENTIFIED SPEAKER: It's 4:00. 12 UNIDENTIFIED SPEAKER: You'd have to be 13 out of here (indiscernible). 14 MR. COUGHLIN: Can we take five minutes, 15 Your Honor, to see if there's a later flight. 16 THE COURT: You can. And also give some 17 thought to if there is any -- I'm always open to 18 ideas about ways to shortcut things if 19 everybody -- you know, if anybody has an idea that 20 makes sense. I'm not suggesting there is one. I 21 just always leave the door open. 22 MR. COUGHLIN: Your Honor, the only 23 shortcut I can see if -- you have the un-redacted 24 portion, if it is your decision and we're not 25 going to sway you, acknowledging in your report</p>

21 (Pages 78 to 81)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 82</p> <p>1 and recommendation the specific number from the 2 privilege log and your ruling along with our 3 objection, if that's going – if your ruling is 4 going to be the same and our objection is the 5 same, we're just somewhat spinning our wheels. 6 THE COURT: All right. I'll – we'll 7 save that for a minute, but let me correct you on 8 something. There won't be a report and 9 recommendation. There will be an order in the 10 case and then you'll have – I've forgotten now 11 the number of days you have to appeal it to the 12 District Judge, and then if you're still 13 dissatisfied, you can try your luck – 14 MR. COUGHLIN: (Indiscernible 15 cross-talk.) 16 THE COURT: – (indiscernible 17 cross-talk.) So, you know, there's avenues for 18 review and we're all grateful for that. But on 19 the issue of – I'm only willing to do that if you 20 tell me that there are no other – you know, 21 that's it. Now, there are some documents in 22 here – let me say, I know there's some documents 23 in here that do not necessarily indicate – there 24 are a few of them, there are not many – that 25 maybe Mr. Peeples wasn't present. Maybe, for</p>	<p style="text-align: right;">Page 84</p> <p>1 documents attached to his, and I've already made a 2 ruling on that, so I don't see that as any 3 different. Would you agree? You would make the 4 same argument, I'd make the same argument. 5 MR. COUGHLIN: I would agree that it 6 does not appear I'm going to change the Court's 7 mind. 8 THE COURT: Okay. Not with that 9 argument, but I guess what I'm doing is giving you 10 a chance to make another one. 11 Anyway, let's do this, so – and as we 12 sit here just before we take a five minute break, 13 I just do want to, for the record, as we noted 14 earlier, the suggestion by defense counsel that 15 they would withdraw Mr. Peeples as a non-retained 16 expert today was disavowed and the Court allowed 17 the defense counsel an opportunity to do that, 18 understanding that Mr. Coughlin may well still 19 continue to – may want to do that in the future, 20 let me put it that way, is that correct, 21 Mr. Coughlin? 22 MR. COUGHLIN: If we can have seven 23 days, Your Honor, to alert the Court and parties 24 to our final decision, that will give us time to 25 talk with our client.</p>
<p style="text-align: right;">Page 83</p> <p>1 example, Mr. Ellis was present and, you know, that 2 same situation there, although the document that 3 he's – all of his opinions are contained in, it's 4 only 1,000 pages, apparently. 5 MR. COUGHLIN: If Mr. Ellis is present, 6 I believe Mr. Peeples was also on the call. 7 THE COURT: Okay. 8 MR. COUGHLIN: That is a study, because 9 Arcadis did the indoor air quality study at the 10 facility. That is a work product, nothing to do 11 with this litigation investigation. 12 THE COURT: But the same argument we've 13 all – we've already gone over about the testing 14 of the indoor air quality at the facility versus 15 whatever is happening at the – actually happening 16 at the neighborhood? 17 MR. COUGHLIN: In the neighborhood. 18 THE COURT: But the question is the same 19 as it was it, is it related to anything that is – 20 MR. COUGHLIN: It's not even related to 21 something that Mr. Ellis is going to testify to. 22 THE COURT: Well, that's – so Peeples 23 is there and we've been through this business 24 about whether there's anything – you know, it's 25 related to anything in the 17 – in the 18</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. DEAS: Your Honor – 2 THE COURT: Yes. 3 MR. DEAS: – we're under – they have a 4 1,900 document privilege log outstanding and I 5 have, what, six or seven days to file a motion to 6 compel absent their deciding to withdraw those 7 privilege issues. I know there – I know there 8 are other things going on. 9 THE COURT: I know. I'm not – I'm not 10 going to put a deadline on you. You can do – I'm 11 not saying that it will be, you know, accepted or 12 what result, what benefit or, you know, what 13 degradation you might do to yourself as a result 14 or anything of that sort. I'm just saying – you 15 know, I'm just acknowledging that it wasn't done 16 today, and you have said that that doesn't mean 17 you might not do it in the future. 18 MR. COUGHLIN: Correct, Your Honor. 19 THE COURT: Okay. All right. Let's 20 take a break. Y'all are welcome to go – if you 21 want to step over to the visiting judge's 22 chambers, if that makes it easier for you to make 23 your calls to see about flights. 24 MR. COUGHLIN: Thank you, Your Honor. 25 THE COURT: You're welcome.</p>

22 (Pages 82 to 85)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 86</p> <p>1 (Brief recess.) 2 THE BAILIFF: All rise. 3 THE COURT: Please be seated, y'all. 4 Were y'all able to make some arrangements? 5 MR. COUGHLIN: We were, Your Honor. 6 Thank you. 7 THE COURT: All right. Let me tell you 8 how I thought we would proceed, unless y'all have 9 some better idea. We've made it through probably 10 about a third to a half of the things on Exhibit A 11 with the exception of the stuff that was on the 12 zip drive and then we have four documents on 13 Exhibit B. What I thought I would do is now shift 14 and do -- I'll finish one document in my stack, so 15 that will take us through 33 on Exhibit A. I'll 16 then do the consultant issue on Exhibit B. I'll 17 then do the zip drive documents. I don't know 18 that they're any different than the rest of the 19 stuff that's on -- they're just the -- it's like 20 the first things that are listed on Exhibit A. 21 I'll do those. And then what I thought is that 22 will leave -- well, that will leave about from 23 40 -- about 40 documents on Exhibit A that we've 24 not looked at. And what I'm thinking we ought to 25 do is take a break and let y'all look, get -- you</p>	<p style="text-align: right;">Page 88</p> <p>1 continuation from the previous page, I think, so 2 we've ruled on -- the ruling will be the same on 3 that one. And so that does complete us on 33. 4 So now let's go -- let's jump to Exhibit 5 B, the privilege log that we have, which for 6 purposes today we're only interested in four 7 documents. And those -- let me be clear. Have 8 those -- were those documents clawback? Did you 9 see those documents, Mr. Deas? 10 MR. DEAS: I think the ones that were 11 marked clawback, Your Honor, I did see. 12 THE COURT: Okay. So the four that 13 we're talking about today, you think you have 14 seen? 15 MR. DEAS: Yes, Your Honor. 16 THE COURT: Okay. All right. So on 17 Exhibit B, these are identified as -- let me tell 18 y'all what they are, because -- they're 939977. 19 And what document number is that, Niccy? Can 20 you -- I mean, what number on the privilege log? 21 Do you reflect a -- 22 UNIDENTIFIED SPEAKER: 3. 23 THE COURT: 3. Okay. So if you'll look 24 at Privilege Log B, Entry No. 3. These are all, 25 as I appreciate it, about the same -- really the</p>
<p style="text-align: right;">Page 87</p> <p>1 know, 30 minutes or, you know, about that and let 2 you look at those and as -- you know, to the 3 extent they're Peeples, then you know what the 4 issue is going to be, you can decide whether you 5 want to argue that that is not related to anything 6 that is on his designation or you can look at it 7 and say, you know, this is not a Peeples -- we'll 8 do the same thing -- this is not a Peeples 9 document, this might need to be treated 10 separately, and then we can come back and I'll 11 hear you on the ones that you want to argue that's 12 not Exhibit F. And, of course, plaintiffs' 13 counsel would need to be prepared to do the same 14 thing including if something is not related to 15 Exhibit F, to so concede so we don't waste time 16 when we get back. So does everybody like that 17 plan? 18 MR. COUGHLIN: Yeah. 19 THE COURT: Like might have been a 20 little much of a stretch. But I guess it's 21 passable. 22 All right. So we're -- let's start 23 again. 33 was the last document I wanted to cover 24 before we moved on. Where am I? Okay. And -- 25 okay. Continuation from the -- this is a</p>	<p style="text-align: right;">Page 89</p> <p>1 identical subject matter, so we'll talk about all 2 four of them. I don't see any reason not to talk 3 about all four of them together so you can follow 4 on the -- and correct me if I'm wrong about that. 5 Niccy, could you give me the other numbers? Do 6 you happen to have those? 7 UNIDENTIFIED SPEAKER: 23. 8 THE COURT: 23. 9 UNIDENTIFIED SPEAKER: 26. 10 THE COURT: 26. 11 MR. COUGHLIN: That's 3, 23, 26. 12 UNIDENTIFIED SPEAKER: 22. 13 THE COURT: And 22. Okay. So I've 14 looked at these. There is a description in the 15 privilege log. I'll -- let me ask you, 16 Mr. Coughlin, to describe what these are so I 17 don't misstate something. 18 MR. COUGHLIN: As we identified in our 19 opposition, Your Honor, the defendants, including 20 Textron, retained an expert whose name is 21 disclosed in these documents as a consulting only 22 expert. That expert was to do what is called a 23 CSIA analysis, it's a chemical isotope analysis. 24 And in order to do that, you need groundwater to 25 do it. So T&M was charged with going out and</p>

23 (Pages 86 to 89)

1 merely collecting the groundwater sample that was
2 then sent to the lab of our expert's choosing, the
3 analysis was done by the lab, communicated only to
4 our expert. T&M -- nobody at T&M ever saw it.
5 Nobody else ever saw that.

6 THE COURT: Uh-huh.

7 MR. COUGHLIN: And -- and I've talked to
8 Mr. Deas about this and said, you would agree with
9 me that if this expert -- this consulting expert
10 used Bob's Drilling Company to go out and take
11 these samples, you wouldn't be entitled to any of
12 that communication, any of those documents. He
13 says, yeah. But because T&M did it, he says he's
14 entitled to it even though T&M is not rendering --
15 and I'll challenge him to find anywhere in the 18
16 where they are rendering a chemical isotope
17 analysis on the groundwater from various wells out
18 of the, you know, thousands of samples that have
19 been done. They simply aren't. They don't even
20 have the expertise to do it. So they were a
21 vendor, if you will, for the consulting expert to
22 go out and take these samples. The vendor -- I'm
23 sorry. The consultant decided where they were to
24 be taken and T&M personnel went out and made sure
25 the well was appropriate to sample and drew the

1 with him that if Bob's Well Service had gone out,
2 unbeknownst to Mr. Peebles their testifying
3 expert, that I probably wouldn't be entitled to
4 discover that, because it would be completely
5 wrapped in the consulting expert protections that
6 are found in the Federal rules. That being said,
7 when a consulting expert -- and I have cases here
8 we can discuss -- reveals to a testifying expert,
9 here -- here designated in two ways as a
10 testifying expert and who signed an affidavit
11 saying, I am a testifying expert in a case reveals
12 information about what they're doing as a
13 consulting expert, they make it, as the cases say,
14 substantially more likely that your adversary will
15 find out about that information, and, thus, waive
16 work product protection as to the information so
17 disclosed. That's what happened here. Whatever
18 information Mr. Peebles has about this CSIA
19 analysis that was done, we're entitled to know,
20 because what CSIA analysis is -- what they're
21 doing with it is they're taking groundwater from
22 one place and groundwater from another place and
23 comparing the isotopes in it to see if, for
24 instance, the TCE at the plant site is the same
25 TCE that's in the groundwater up at Moose Lodge

1 water out.

2 THE COURT: All right. And who is the
3 consultant?

4 MR. COUGHLIN: Lori LaPratt is the
5 consultant.

6 THE COURT: All right. And these were
7 taken -- these samples were taken -- which we can
8 discuss the samples, because -- well -- well, no.
9 All -- all that is at issue here is information
10 related to the samples that were taken, let's just
11 be clear about that, as opposed to any of the --
12 nothing is at issue here about the results or
13 analysis of that -- of those, right?

14 MR. COUGHLIN: Well, Your Honor, I'm not
15 about to open a door to have Mr. Peebles try to
16 crank that crack open and drive the truck through
17 it. So the four documents at issue here are
18 communications and the sampling from the well
19 sampling event.

20 MR. DEAS: Your Honor, may I respond to
21 that?

22 THE COURT: You may.

23 MR. DEAS: A couple of things are
24 notable about what Mr. Coughlin just said. He's
25 correct in that we spoke about it, and I agreed

1 Road. That's what they're doing. And if the
2 results were that it is, that's not very good for
3 them. I bet you if the results had been that it
4 weren't, we'd probably have those guys testifying
5 in that case. That's an inference we may want to
6 make it -- if we had that information in the case.
7 But we are entitled to know what Mr. Peebles,
8 their test -- their designated expert, knows
9 about it. And, in this instance, it may just be
10 where they took the samples. As a matter of fact,
11 that is what's on the sheet, because I read it.
12 Where they took the samples, it was at Moose Lodge
13 Road, it was at the plant site and it was in a
14 couple -- and it was in the neighborhood, maybe.
15 They shouldn't have given it to him as a
16 testifying expert if they didn't want us to
17 discover it. They did and they can't un-ring that
18 bell. I'm not saying that we get to get their
19 consulting expert's stuff, but what they're
20 testifying expert had to inform his testimony, we
21 are entitled to under the Federal rules.

22 MR. COUGHLIN: Your Honor, we have
23 provided the Court the Sara Lee case that, you
24 know, talks about this wall. That's -- that's
25 even more narrow where the person is both a

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 94</p> <p>1 consulting expert and a testifying expert in the 2 same case. The cases that Mr. Deas has provided 3 the Court, I talked about earlier where the 4 testifying expert, in his deposition or otherwise, 5 reached across the wall and relied on his 6 consulting expert work in forming his opinions and 7 in forming his testimony. 8 THE COURT: Well, let me ask you this: 9 Is -- is this related to any matters on Exhibit F, 10 either because it advances some position that's 11 made on Exhibit F or it would be material for 12 cross-examination of some point that on Exhibit F 13 Mr. Peeples is offered as an non-reporting expert? 14 MR. DEAS: Absolutely, Your Honor. 15 Exhibit F is chock-full of groundwater monitoring 16 reports, the AOCA and Kirk PCA, Moose Lodge Road 17 investigative reports, in which opinions are 18 offered about the source and delineation of 19 groundwater plumes that exists out around the 20 Grenada facility. That's exactly what these 21 studies were intended to -- to reach further 22 determination about. Another thing 23 Mr. Coughlin didn't mention is that Ms. LaPete 24 (sic) works for Ramboll Environ, the same people 25 that Mr. Machado and Mr. Powell are employed by or</p>	<p style="text-align: right;">Page 96</p> <p>1 wouldn't this be ample for -- I mean, why wouldn't 2 this be good for cross-examination? Well, you're 3 going to give an opinion it didn't come from here, 4 but you -- but you've disregarded this other 5 testing that you know occurred. 6 MR. COUGHLIN: He -- he never got the 7 testing. 8 THE COURT: Because he chose not to get 9 the testing -- 10 MR. COUGHLIN: No. 11 THE COURT: -- apparently. Why would 12 you offer it -- that would be -- 13 MR. COUGHLIN: No. 14 THE COURT: -- what you would say on 15 cross-exam. 16 MR. COUGHLIN: No, Your Honor. If a 17 consulting expert did it -- 18 THE COURT: Uh-huh. 19 MR. COUGHLIN: -- the Rules are clear as 20 to what the other side can't get, and you cannot 21 advance an argument of inference. Well, you knew 22 this was done and -- that -- that invades the 23 consulting expert privilege. 24 THE COURT: Okay. I'm not talking about 25 what the consulting expert did in this case. I'm</p>
<p style="text-align: right;">Page 95</p> <p>1 she did. I think she's since left. But at the 2 time, she was an employee of the same -- 3 THE COURT: Retained expert. 4 MR. DEAS: -- environmental firm that 5 their other two specially retained experts worked 6 for, who -- you know, I'm not saying they knew 7 about it. They said they didn't. I take their 8 word for it. But this was all very close for 9 comfort from the plaintiffs' perspective. And 10 it -- it -- 11 THE COURT: Well, let me ask -- I don't 12 mean to interrupt you, but let me ask you this -- 13 MR. DEAS: Sure. 14 MR. COUGHLIN: -- so if Mr. -- is Mr. 15 Peeples expected to testify or -- and I don't care 16 if he's expected. Is it anywhere in Exhibit F 17 that Mr. Peeples says that -- gives any kind of 18 opinion or facts and data to advance the position 19 that the -- whatever is in the neighborhood came 20 from some place as opposed to another place? 21 MR. DEAS: Yes, Your Honor. 22 MR. COUGHLIN: Yes, Your Honor, you've 23 heard that today. 24 THE COURT: Okay. That being the case, 25 why, Mr. Coughlin -- if that's the case, why</p>	<p style="text-align: right;">Page 97</p> <p>1 talking about what Mr. Peeples did that relates to 2 a matter on which he is expected to testify. 3 The -- he didn't do a whole lot on it, I'll give 4 you that -- 5 MR. COUGHLIN: He -- 6 THE COURT: -- but he did something. 7 MR. COUGHLIN: Your Honor, the chemical 8 isotope analysis is a detailed scientific analysis 9 that Mr. Peeples nor T&M has the ability to do. 10 There is nothing in the 18 categories that deal 11 with chemical isotope analysis of the groundwater. 12 It's not there. And so while -- you're 13 characterization of, does it have anything to do 14 with anything? Well, that -- that might be a -- 15 pre-2010, it might lead to the discovery of 16 admissible evidence. But here, you have to look 17 at what the opinions are and what the work was 18 for. And here, T&M, including Mr. Peeples, but 19 others were involved in going out and actually -- 20 Mr. Peeples didn't go out and actually do the 21 sampling. 22 MR. DEAS: Your Honor, if Mr. Peeples 23 had written a -- an expert report that said, this 24 is an expert report for this case and here are my 25 opinions, I could perhaps see his point.</p>

25 (Pages 94 to 97)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 98</p> <p>1 THE COURT: All right. Let's -- let's</p> <p>2 stop there. If y'all start -- y'all have done an</p> <p>3 excellent job of not talking over each, so let's</p> <p>4 try not to do that and I'll try not to.</p> <p>5 MR. COUGHLIN: So we have to look at,</p> <p>6 especially when we're dealing with the consulting</p> <p>7 expert privilege, what a party is or isn't able to</p> <p>8 discover about that, and you're not allowed to</p> <p>9 discover facts held by the consulting expert.</p> <p>10 THE COURT: I'm not -- we're not talking</p> <p>11 about that.</p> <p>12 MR. COUGHLIN: But that's exactly what</p> <p>13 they're looking for.</p> <p>14 THE COURT: Well, they're not going to</p> <p>15 get it with these four documents, because these</p> <p>16 four documents do not say any -- do not reflect</p> <p>17 anything that the consulting expert did.</p> <p>18 MR. COUGHLIN: But that's -- that's</p> <p>19 beyond facts. That's actually the analysis and</p> <p>20 the opinions of the consulting expert. This deals</p> <p>21 with facts. And so when -- as we've been talking</p> <p>22 about, Bob's Drilling Company, if Bob's Drilling</p> <p>23 Company did it, they're not even entitled to know</p> <p>24 that or to know where they sampled, how much they</p> <p>25 sampled or what the results were of just the</p>	<p style="text-align: right;">Page 100</p> <p>1 opinions, so information that is related to how it</p> <p>2 got there that was -- is in the possession of</p> <p>3 Mr. Peeples, ever how it got there, is, in my</p> <p>4 view, not protected by work product privilege or</p> <p>5 the consulting privilege, because it is related to</p> <p>6 something he's going to testify about, and he did</p> <p>7 it. It's not a communication between the</p> <p>8 consultant and counsel.</p> <p>9 MR. COUGHLIN: Your Honor, I would</p> <p>10 challenge plaintiffs' counsel to find one of the</p> <p>11 18 categories that mentions CSIA analysis.</p> <p>12 THE COURT: But that --</p> <p>13 MR. COUGHLIN: There isn't.</p> <p>14 THE COURT: Well, I understand, but I</p> <p>15 mean, we all can think past Step 1. We understand</p> <p>16 that, no, that particular testing might not be</p> <p>17 done, but if you're going to give -- it's a test</p> <p>18 for origin of -- of a substance as it's been</p> <p>19 described here.</p> <p>20 MR. COUGHLIN: No, it's not.</p> <p>21 THE COURT: All right.</p> <p>22 MR. COUGHLIN: That's not what -- it's</p> <p>23 like they stuck a straw in a can of soda pop and</p> <p>24 pulled it out and said, okay, here it is. That's</p> <p>25 what they did. That's all they did.</p>
<p style="text-align: right;">Page 99</p> <p>1 groundwater sample, leaving aside the lab analysis</p> <p>2 and the special analysis for chemical isotope</p> <p>3 work. They're not entitled to that. And merely</p> <p>4 because T&M personnel went out and did the actual</p> <p>5 drawing of the water out, they believe they're</p> <p>6 entitled to that. It -- it's -- if Mr. Peeples is</p> <p>7 not rendering an opinion and did not consider</p> <p>8 this -- and there's no way he could consider this,</p> <p>9 because it has nothing to do with his work.</p> <p>10 Chemical isotope analysis is not part of his work.</p> <p>11 THE COURT: I understand, Mr. Coughlin.</p> <p>12 But let me say, for the record, I'm not saying it</p> <p>13 has to do with anything. I'm saying -- I think</p> <p>14 I've said repeatedly, is it related to matters on</p> <p>15 which Mr. Peeples has been designated as a</p> <p>16 non-reporting expert on Exhibit F?</p> <p>17 MR. COUGHLIN: No.</p> <p>18 THE COURT: Okay. Well, that's just to</p> <p>19 be clear. And -- and the other side says, yes, it</p> <p>20 is. And the reason they say -- just for -- my</p> <p>21 understanding of it, so you can correct me in how</p> <p>22 I'm misunderstanding, is that in Exhibit F there</p> <p>23 are opinions about how -- whatever is going on at</p> <p>24 the neighborhood, how it got there, and</p> <p>25 Mr. Peeples is going to be offered to give such</p>	<p style="text-align: right;">Page 101</p> <p>1 THE COURT: Uh-huh.</p> <p>2 MR. COUGHLIN: And so --</p> <p>3 THE COURT: Well, they did it for a</p> <p>4 reason.</p> <p>5 MR. COUGHLIN: Well, they did it at our</p> <p>6 instruction. And the fact of the matter, Your</p> <p>7 Honor, is what these documents have has nothing</p> <p>8 actually to do with what's in the water. None of</p> <p>9 these documents say what is in the water.</p> <p>10 THE COURT: I understand. They reflect</p> <p>11 that Mr. Peeples did sampling out there, that's</p> <p>12 what they reflect, of groundwater, a subject on</p> <p>13 which he is going to give testimony.</p> <p>14 MR. COUGHLIN: He is going to testify</p> <p>15 with regard to groundwater flow, directions, and</p> <p>16 the results of analysis of groundwater that they</p> <p>17 did. There is no analysis of the groundwater in</p> <p>18 here. All it --</p> <p>19 THE COURT: That's not true. I mean,</p> <p>20 there is -- there is a statement of what all the</p> <p>21 readings were the last time of TCE. It's -- I</p> <p>22 mean, I -- you know, I guess -- I don't want to --</p> <p>23 I mean, I know counsel has seen the document</p> <p>24 before, but -- and I don't want to call it out,</p> <p>25 but where you say something that really is</p>

26 (Pages 98 to 101)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 102</p> <p>1 demonstrably not so, I feel compelled to.</p> <p>2 MR. COUGHLIN: Those are -- those are</p> <p>3 prior test well data --</p> <p>4 THE COURT: Right.</p> <p>5 MR. COUGHLIN: -- that they had, which</p> <p>6 they already have. They already have this.</p> <p>7 THE COURT: Okay. But I'm -- my point</p> <p>8 is, you know, this is about that. It appears to</p> <p>9 be about that. Why would you put it on there?</p> <p>10 MR. COUGHLIN: A decision would have to</p> <p>11 be made by the consultant as to which well to</p> <p>12 sample. Certain wells that have non-detects are</p> <p>13 not worth sampling. So you're -- there is an</p> <p>14 analysis that went through there consulting</p> <p>15 experts mind frame concerning selection of the</p> <p>16 locations, and then the data, which is previous</p> <p>17 T&M data, was used then to move forward with that</p> <p>18 selection.</p> <p>19 MR. DEAS: There's no privilege for a</p> <p>20 communication between a testifying expert and a</p> <p>21 consulting expert, which is what he just</p> <p>22 described.</p> <p>23 MR. COUGHLIN: That -- they didn't have</p> <p>24 that communication with them.</p> <p>25 THE COURT: All right.</p>	<p style="text-align: right;">Page 104</p> <p>1 rule specifically only applies to specially</p> <p>2 retained experts, and Mr. Peeples has been</p> <p>3 designated as a non-reporting expert.</p> <p>4 MR. COUGHLIN: Well, this is dealing</p> <p>5 with the expert who is a consulting expert and</p> <p>6 those communications with another party, however</p> <p>7 they're designated. He's not -- just because he</p> <p>8 is a non-report-generating expert, doesn't mean</p> <p>9 you get those discussions. It's still -- it's</p> <p>10 work product. The whole consulting expert</p> <p>11 privilege is based upon work product.</p> <p>12 THE COURT: So let me just make sure I</p> <p>13 understand. In addition to being a reporting</p> <p>14 expert on those subject matters and a</p> <p>15 non-reporting expert, Mr. Peeples is also a</p> <p>16 consulting expert and was a consulting expert when</p> <p>17 acting to do the groundwater samples, is that it?</p> <p>18 MR. COUGHLIN: He was acting as a vendor</p> <p>19 to the consulting expert. That's all this is.</p> <p>20 THE COURT: Okay.</p> <p>21 MR. COUGHLIN: Now -- now, when you</p> <p>22 raise that specter, Your Honor, I will say with</p> <p>23 regards to -- and there are a number of the</p> <p>24 documents you haven't gone over yet. With regards</p> <p>25 to the vapor intrusion analysis and study that is</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. DEAS: Even if they routed it</p> <p>2 through counsel, there's no --</p> <p>3 THE COURT: Is there any further</p> <p>4 argument that the Meritor wishes to make or the</p> <p>5 defendants wish to make?</p> <p>6 MR. COUGHLIN: Well, in terms of the</p> <p>7 grouping, which is 977 through 992, which is the</p> <p>8 groundwater sampling field data, again, this is --</p> <p>9 those are the kinds of facts that the Rules</p> <p>10 provide should not be disclosed. And these --</p> <p>11 these comments concerning communications between a</p> <p>12 consulting expert and a testifying expert are fair</p> <p>13 game, is -- is simply not true. That -- it has to</p> <p>14 be something considered in forming the opinions</p> <p>15 the expert is going to express. Again, I</p> <p>16 challenge plaintiffs' counsel to find anything on</p> <p>17 CSIA. There's nothing. And so what you're --</p> <p>18 what they're doing is saying, let's go back to</p> <p>19 pre-2010, let's just throw the doors open and we</p> <p>20 get everything from an expert. That is not what</p> <p>21 the 2010 amendments were meant to do. They were</p> <p>22 supposed to restrict discovery.</p> <p>23 THE COURT: As to -- and as you well</p> <p>24 know from reading the Rule, that it -- they</p> <p>25 specifically -- the amendment to the work product</p>	<p style="text-align: right;">Page 105</p> <p>1 represented in the handwritten notes, yes, he is a</p> <p>2 consulting expert of ours along with Arcadis for</p> <p>3 purposes of that analysis.</p> <p>4 THE COURT: Okay. We'll get to that.</p> <p>5 My question is -- and as it has been, whether this</p> <p>6 information on these four documents related to</p> <p>7 Mr. Peeples taking samples at certain areas is</p> <p>8 related to matters on which he has been designated</p> <p>9 as a non-reporting expert and you say, no.</p> <p>10 MR. COUGHLIN: And I'll -- and I'll</p> <p>11 represent, Your Honor, that the findings --</p> <p>12 not the findings, but the data that is reflected</p> <p>13 in the document numbers I read out is not in the</p> <p>14 database. It's not in Exhibit 14.</p> <p>15 THE COURT: Okay. And you further</p> <p>16 represent to the Court, and I accept that</p> <p>17 representation, that nothing on Exhibit F refers</p> <p>18 to CSIA?</p> <p>19 MR. COUGHLIN: Correct, Your Honor.</p> <p>20 THE COURT: On the other hand, the</p> <p>21 plaintiffs say, well, it doesn't refer to CSIA,</p> <p>22 but it does refer to the type of thing that CSIA</p> <p>23 is designed to achieve, is that correct,</p> <p>24 Mr. Liston? I mean, excuse me, Mr. Liston or</p> <p>25 Mr. Deas.</p>

27 (Pages 102 to 105)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 106</p> <p>1 MR. DEAS: Yes, that's correct, Your 2 Honor. 3 THE COURT: Okay. I understand. And 4 like we talked about, there are ample 5 opportunities for review. Again, I think all of 6 this comes back to the manner in which this expert 7 was designated. And, you know, I understand that 8 the rulings are coming down the way they're coming 9 down, and, as you know, it's primarily for that 10 very reason -- I think that's all we've really 11 discussed here today at least thus far. And, once 12 again, that's what I am looking at. I -- you 13 know, if this expert is going to hit the stand and 14 testify about where things came from and he's done 15 work about -- in connection with taking samples to 16 determine -- you know, to -- for somebody else to 17 do something with, I understand that, I think it 18 relates to that. I think it relates to the origin 19 of the materials. It may not relate sufficiently, 20 ultimately to come in. But I think of everybody 21 here, the party responsible for that designation 22 ought to bear, you know, the short end of the 23 stick is what it amounts to. I mean, I think 24 where -- where it is -- that's what I mean. So 25 that's going to be my ruling. I'm going to allow</p>	<p style="text-align: right;">Page 108</p> <p>1 THE COURT: I think that's what Niccy is 2 correcting. 3 (Indiscernible cross-talk.) 4 MR. LISTON: Thank you. 5 MR. DEAS: For clarity, the Court is 6 ordering all of those be produced? 7 THE COURT: Yes. Okay. Now, let me get 8 the zip drive documents. I don't think there are 9 very many. No, there are not that many of those. 10 And we'll try to get through these. 11 So let's see. This is Exhibit A, and 12 the first -- No. 2 on Exhibit A, Entry No. 2 -- 13 UNIDENTIFIED SPEAKER: (Indiscernible.) 14 THE COURT: Yeah, No. 2 -- 15 MR. COUGHLIN: Your Honor, we withdrew 16 our assertion of privileges to No. 2. We sent the 17 document -- 18 THE COURT: Okay. 19 MR. COUGHLIN: -- to plaintiffs' 20 counsel. 21 THE COURT: Okay. Then that's moot. 22 All right. Let's go on to No. 3 on the 23 document. And this is handwritten notes of a 24 conversation with Linda Furlough, Trudy Fisher, 25 Jim Peebles and Scott Blanchard, note -- notes</p>
<p style="text-align: right;">Page 107</p> <p>1 it to be produced, because it is work that 2 Mr. Peebles did that, in the Court's view, does 3 relate to what he is designated to testify on. 4 albeit, I agree he is not, so far as I know, 5 designated to testify on the specific type of 6 testing that these samples would be subjected to. 7 But these samples would be subjected to a type of 8 testing that would reveal something on a -- 9 that -- a subject matter on which he is expected 10 to testify, i.e., origin. So -- all right. 11 That's that. 12 Now, let's move to -- let's do the zip 13 drive documents and then we will take our break. 14 UNIDENTIFIED SPEAKER: Judge. 15 THE COURT: Yes. 16 UNIDENTIFIED SPEAKER: (Indiscernible.) 17 THE COURT: All right. Niccy wants to 18 make a correction on those numbers. 19 UNIDENTIFIED SPEAKER: 3, 23, 26 and 48. 20 THE COURT: 3, 23, 26 and 48 are the 21 four documents that we were just referencing on 22 Exhibit B. 23 MR. DEAS: 3, 23, 26, 48? 24 MR. LISTON: I thought 22 was in there 25 earlier?</p>	<p style="text-align: right;">Page 109</p> <p>1 discuss instructions from counsel regarding EPA 2 sampling. Let's see. So there's really just a 3 small redaction here on this document. Let's see. 4 Let's see. It says that these notes are regarding 5 EPA sampling, that's fairly generic. Can you give 6 us a little more. Mr. Coughlin? 7 MR. COUGHLIN: Let me take a look at 8 this, Your Honor. It's somewhat light. Your 9 Honor, to put context to this, two pages earlier, 10 774, there is a conference call with the people 11 that are on the referenced call and employees of 12 the EPA Region 4 and going through a number of 13 issues concerning the dispute with the EPA. Then 14 there is a separate phone call between Linda 15 Furlough, who was in-house counsel at Meritor, 16 Trudy Fisher, a partner at Butler Snow, Jim 17 Peebles and Scott Blanchard concerning that phone 18 call. 19 THE COURT: Well, I mean, the question 20 is, among other things -- I mean, he's -- as a 21 non-reporting expert, Mr. Peebles is simply not 22 entitled to assert work product privilege under 23 the work product -- under Rule 26. And, you know, 24 I think Rule 26 is clear that it only applies to 25 re -- to specially retained experts.</p>

28 (Pages 106 to 109)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 110

1 MR. COUGHLIN: And as we have designated
2 him as so. Your Honor, we are standing --
3 THE COURT: Right. You stand on that.
4 I understand. But I asked the further question of
5 whether, in fact, irrespective of that, does this
6 relate to anything that Mr. Peeples is expected to
7 testify -- excuse me -- anything that relates to
8 anything that's on Exhibit F? And I don't think
9 that, you know, we're capable of making that
10 decision with the description that's been provided
11 as to what this is. So I'm asking you, can you
12 give us a little more in the way of what this is,
13 because as it stands, it's -- it just says it
14 concerns EPA sampling. It's instructions from
15 counsel to T&M regarding EPA sampling. And I --
16 MR. COUGHLIN: The --
17 THE COURT: Like the last two lines --
18 MR. COUGHLIN: Correct.
19 THE COURT: -- in particular. It
20 doesn't look like something counsel would be --
21 MR. COUGHLIN: Under how you have viewed
22 Mr. Peeples' characterization, you could make that
23 argument. Under how we view Mr. Peeples' opinions
24 and testimony, I would say, no, it does not.
25 THE COURT: Okay. All right. With

Page 112

1 actually a different context to this. There are
2 additional attendees on the phone call including
3 Rob Paul and Ranjit Machado, and this is to go to
4 the attorney work product analysis of assembling
5 the materials for those experts. We actually --
6 THE COURT: Well, I mean, you're
7 supposed -- even if it was a reporting expert,
8 they're entitled to the facts and data on which
9 you've relied.
10 MR. COUGHLIN: They got the facts and
11 data.
12 THE COURT: Okay.
13 MR. COUGHLIN: That's -- Document
14 No. 14, I believe it is, from Report 14 is the
15 EQulS database that contains what we're talking
16 about, what the discussion was, so they have -- if
17 we communicate the facts and data, that's true,
18 and they got it. This is the work product in
19 fleshing out exactly what's there and everything
20 that should be provided, but this isn't the actual
21 data.
22 MR. DEAS: To -- to the extent work
23 product protection exists for a conversation with
24 a reporting expert, as we would agree, I think all
25 of us, that it does, that's not an absolute

Page 111

1 that, then we'll have our same agreement to
2 disagree --
3 MR. COUGHLIN: Probably so.
4 THE COURT: -- that we've had on other
5 cases and I'll allow the production of it.
6 And we'll move on to our next -- next
7 page, which is -- this is 7794 and it's No. 4 on
8 the list. And what's redacted is said to be
9 handwritten notes, conference with Thompson Hine,
10 Meritor's environmental consultants, but Thompson
11 Hine is also identified as Meritor's lawyers; is
12 that right?
13 MR. COUGHLIN: I would hope so.
14 THE COURT: Okay. I just wanted to make
15 sure. They -- I -- you know, they're identified
16 here as the environmental consultant. And T&M.
17 Do the -- the notes discuss gathering documents
18 necessary for testifying expert to review. So
19 these are things that you want Mr. Peeples to
20 review concerning the subject -- you know, which
21 obviously are going to concern his testimony, and
22 since he's designated as a non-reporting expert,
23 if your argument is -- so do we have the same
24 argument as to this document?
25 MR. COUGHLIN: No, Your Honor. There's

Page 113

1 protection. If you include other people in that
2 process, you waive it. And here, you've got a
3 mixed bag of people. You know, when they -- even
4 when they amended the Rule in 2010, those
5 amendments were very slight. They weren't nearly
6 as broad as Mr. Coughlin has liked to suggest
7 today. All they did were protect the
8 communications between reporting experts and
9 counsel for the party they were expected to
10 testify on behalf of and draft reports. That's
11 it. There's no protection for communication with
12 any other party, any other person. And this -- in
13 this instance, you've got a -- a conglomeration of
14 people, some whose communications with counsel
15 might have been protected and some whose
16 communications with counsel clearly weren't, and
17 that's sort of the situa -- situation that it's
18 the responsibility of counsel whose idea it's the
19 intent of the Work Product Doctrine to protect to
20 manage if they intend to assert it later. They
21 failed to do so, and the privilege is waived.
22 MR. COUGHLIN: Your Honor, would you
23 agree that until such time as an expert disclosure
24 is made, all experts are deemed consulting
25 experts? Lawyers make decisions all of the time

29 (Pages 110 to 113)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 114

1 to either list somebody or not list somebody, and
2 the Rules protect accordingly.

3 THE COURT: Are you asking me a
4 hypothetical question?

5 MR. COUGHLIN: I am.

6 THE COURT: Well, a long time ago, and
7 I've answered those. That's called a trap.

8 Please go ahead. I don't mean to cut you off. I
9 think though if he were a consultant – if you
10 hired him and then – and used him and then
11 designated him, I think when you designate him
12 as – you would – you would not then be able to
13 claim that everything he had done, you get tied
14 and he can go testify all fresh and new and – no,
15 I don't think you can do that.

16 MR. COUGHLIN: I agree with that, Your
17 Honor. The question is, as this court recognizes,
18 we te- – we identified him as a testifying
19 expert.

20 THE COURT: Yes.

21 MR. COUGHLIN: A report-generating
22 testifying expert.

23 THE COURT: You did.

24 MR. COUGHLIN: I understand the Court's
25 position. But with regards to our position and

Page 116

1 in connection with their opinion, map of
2 Mississippi. There doesn't need to be a map
3 attached.

4 MR. COUGHLIN: But that note references
5 a communication. The – to flip your
6 hypothetical, if the expert calls and says, should
7 I review the map of Mississippi, the Rules say
8 that's actually protected.

9 THE COURT: I agree with that.

10 MR. COUGHLIN: And so when you're –
11 what the Rule is getting at is the facts and data
12 that are communicated or the assumptions that the
13 expert is told to rely on. It's different for
14 assumptions – you have to – you're told to rely
15 on. That – they're entitled to that
16 communication. Here, look at this. Here's all of
17 this. And, you know, there is – I hate to throw
18 stones. I mean, there was communications all over
19 the place from plaintiffs' experts we never got.
20 Now – now, they're saying, we should have
21 everything. Well, it should be – it should have
22 been tit for tat. They never – they didn't give
23 us a privilege log on these communications where
24 Mr. Deas tells his expert –

25 MR. DEAS: Yes, we did, Your Honor.

Page 115

1 when counsel is going through the process and you
2 have two testifying experts or three testifying
3 experts and there is a discussion concerning the
4 work product of the case, the Rules protect that.

5 THE COURT: Why is – one thing I'm not
6 clear on. If I call my expert and I tell my
7 expert, I want you to review the this map, the
8 that map and the other map, and my expert writes
9 down, reviewed these maps, that seems to be a
10 communication of facts and data on which the
11 expert is asked to – at least to consider,
12 doesn't have to – you know, as you well know,
13 consider does not mean adopt. It just means, you
14 know, you considered it. You disregarded it. You
15 may have done something else with it.

16 MR. COUGHLIN: Your Honor, telling
17 somebody to look at a map is not facts or data
18 unless the map is attached to the communication.
19 They would be entitled to the map.

20 THE COURT: Well, I mean, I think you
21 can – I'm not sure – I'm not sure I agree with
22 that. I mean, I think if you tell somebody to
23 look at the map of Mississippi, then you've told
24 them, you know, that – they have looked at the
25 map. When they write down what they've reviewed

Page 117

1 THE COURT: Okay.

2 MR. DEAS: I'm going to cut him off
3 right there. We certainly did.

4 THE COURT: Okay. Wait, wait, wait.
5 That isn't going to do us any good here anyway.

6 MR. COUGHLIN: So the question is, what
7 do the Rules say? And the Rules are very specific
8 and they're meant to limit the disclosure.
9 They're not meant to be read as ambiguous or any
10 ambiguity should be against the drafter of the
11 Rule. It is, in terms of the communication,
12 providing facts, data or analy- – facts or data
13 for the Court or – I'm sorry – for the expert to
14 consider.

15 THE COURT: All right. I understand
16 your argument. And for the reasons I've
17 discussed, including that Mr. Peeples as well –
18 well, Mr. Peeples is a non-reporting expert in
19 this case making Rule 26, in the Court's view, not
20 applicable, when – because of – as we know, the
21 history of the Rule and what the comment says,
22 that that Rule won't be applicable to him as a
23 non-reporting expert, and the fact that this call,
24 I mean, there – there are literally probably –
25 one, two, three, four, five, six, seven, eight,

30 (Pages 114 to 117)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 118</p> <p>1 nine, ten – it looks like at least eleven people 2 on the call from various and sundry places, and 3 that and/or the fact that it appears to me that 4 this is the expert writing down what – what 5 what's to be reviewed by, you tell me the 6 result – the reporting expert, Randolph. So I 7 understand your argument. I disagree and I, you 8 know, will rule accordingly. As I said, time and 9 time again, that's why we have review courts and 10 district judges. 11 So let's turn to the next one. And this 12 is 97795. No. 5. Oh, yeah, I see. So this one 13 is four pages long. It goes through -99. And 14 according to the log – well, apparently this is a 15 continuation from No. 4, but let's look at it 16 since it's listed separately. Discussing – this 17 is phone conversation with counsel discussing 18 different sources of data to be provided to the 19 testifying expert. 20 MR. COUGHLIN: It's a continuation, Your 21 Honor. 22 THE COURT: All right. Here – but 23 you've also recited – you've also – here, you 24 reference the attorney/client privilege under 502, 25 not a – a subject about which not much has been</p>	<p style="text-align: right;">Page 120</p> <p>1 one, of No. 5, come down, you know, not four 2 lines. Is – is there anything that is – yeah, 3 and the next page, there is various and sundry 4 things that I think you – well, I'll let you say 5 what you want to say about that. These are 6 Peeple's notes that – yeah, I think – I don't 7 see a basis to exclude these, but let me let you 8 make your argument. 9 MR. COUGHLIN: Again, Your Honor, these 10 are communications that do not fall within one of 11 the three exceptions to Rule 26(b)(4)(C) because 12 they are not providing the identity of facts or 13 data that the party's attorney provided, because 14 we didn't have the data, and that the expert 15 considered in forming the opinions. And so what 16 the Court is doing is throwing out the baby with 17 the bathwater and saying, there's no work 18 product – protected work product when you discuss 19 with your expert the kinds and quality of what 20 they're investigation might be, what should it 21 entail, those kinds of things – 22 THE COURT: Well, and let me respond to 23 that – 24 MR. COUGHLIN: – which is what these 25 notes are.</p>
<p style="text-align: right;">Page 119</p> <p>1 said. But you've said repeat – I mean, 2 communication with specially retained experts, as 3 you know, are expressly excluded from the 4 attorney/client privilege. So I don't – I guess 5 maybe that's why we're not – you're not advancing 6 that today? You're arguing work product on this 7 or not? 8 MR. HUBBARD: Given your rulings with 9 respect to the non- – that he's a non-reporting 10 expert, yes. 11 THE COURT: Okay. Well, I mean, the 12 rule on attorney/client privilege is – you know, 13 the comment says, that communications – well, 14 communications – well, I'll just withdraw that 15 and let y'all – 16 MR. HUBBARD: Right. It – 17 THE COURT: Yeah, you know what I'm 18 talking about? 19 MR. HUBBARD: Yeah. 20 THE COURT: Okay. All right. So on 21 this one, this is all about – or I can see things 22 in here that I know are the subject of the 23 expert – I mean, the Peeple's expert report. And 24 if I – I'll direct defense counsel's attention 25 to, if you'll look on 95, the first page of this</p>	<p style="text-align: right;">Page 121</p> <p>1 THE COURT: I do want to respond to that 2 just to be clear on the record and at the great 3 risk of redundancy. With respect, that is not 4 what I'm doing. I am holding you to the fact that 5 you have designated his gentleman as a 6 non-reporter, and the amendment to Rule 26 7 expressly does not apply to non-reporters. Now, I 8 understand that you also designate him as a 9 reporter and you want to argue that that 10 designation should trump over the non-reporter 11 designation, and I simply disagree with you on 12 that point. I think we understand each other, do 13 we not? 14 MR. COUGHLIN: We do. 15 THE COURT: Okay. All right. So this 16 matter will come in. 17 That takes us to – almost – I think 18 we're almost to the end – 6. 19 MR. COUGHLIN: It is a similar topic as 20 to discussions regarding the gathering of 21 information to be used by each and every one of 22 the experts that Meritor designated as a 23 testifying, report-generating expert. 24 THE COURT: All right. Including 25 Mr. Peeple's?</p>

31 (Pages 118 to 121)

Transcript of Proceedings 2/1/2018

Page 122

1 MR. COUGHLIN: Correct.
2 THE COURT: All right. Let's -- the
3 Court's ruling will be the same with respect to
4 that document.
5 And the next, which is No. 7, and No. 7
6 is a single -- I mean, it's only about seven or
7 eight lines that's redacted. There is a lengthy
8 explanation here, so let me just take a quick
9 second. Okay. I think this is the same. This
10 concerns the sampling at the direction of the
11 consulting expert that was earlier discussed with
12 regard to what's on Exhibit B.
13 MR. COUGHLIN: Yes, Your Honor. This
14 concerns CSI sampling at the location. Again,
15 something that Mr. Peeples is not -- never has
16 been retained or identified on or anyone else from
17 T&M.
18 THE COURT: All right. Who is Patrick
19 O'Meara?
20 MR. HUBBARD: He's not internal with
21 T&M.
22 MR. DEAS: Your Honor, I believe he's
23 their client contact with Test American, which was
24 a laboratory that I believe was running the CSIA
25 laboratory work on behalf of Ms. LaPete or LaPate

Page 124

1 MR. COUGHLIN: That's not what we did.
2 MR. DEAS: There's no contract with the
3 individuals that we've ever seen. I mean, you
4 retained Ramboll Environ in each case.
5 MR. COUGHLIN: I disagree with that.
6 Your Honor, that's like clients hire Thompson
7 Hine. I represent them, but they bill -- you
8 know, they pay Thompson Hine. They don't pay Tim
9 Coughlin --
10 THE COURT: Well --
11 MR. COUGHLIN: -- which would have been
12 nice.
13 THE COURT: -- I understand. But I
14 would expect that Tim Coughlin would probably go
15 down the hall and talk to Joe Blow about the case.
16 MR. COUGHLIN: No. I don't go talk to
17 my pension partners about a toxic tort case. I
18 don't talk to my tax partners about it.
19 THE COURT: Well, it's the same case.
20 MR. COUGHLIN: Different offices.
21 THE COURT: It's the same subject
22 matter.
23 MR. COUGHLIN: In different offices.
24 THE COURT: Well, I just -- I don't know
25 what I'm thinking about that. I don't know --

Page 123

1 (sic), if I'm not mistaken. And I apologize for
2 having discerned that over the last couple of
3 months.
4 MR. COUGHLIN: Yeah, Test American did
5 not run the lab data.
6 THE COURT: Well, let me ask --
7 MR. DEAS: Okay. He said -- he was
8 around all of this stuff a lot. He might just
9 have been interested.
10 THE COURT: Let me stop just a second
11 and ask you all, tell me again, what -- what is
12 the deal about the consulting expert is an
13 employee of the same company who has been
14 specially retained to give expert testimony?
15 MR. COUGHLIN: Your Honor, we retained
16 Ranjit Machado. We retained Rob Powell, that's --
17 along with Textron, and we retained Ms. LaPratt,
18 separate engagements with them, and they each have
19 separate teams or support staff, because of their
20 differences in expertise. One is a groundwater
21 expert, one is a vapor intrusion, air modeling
22 expert and one is a CSIA expert.
23 THE COURT: I mean --
24 MR. DEAS: Your Honor, their contracts
25 are with the company.

Page 125

1 think it's necessarily pertinent to what I'm doing
2 today necessarily. I haven't thought thoroughly
3 through it, because, really, that's the first I've
4 heard of that. And I -- you know, this whole
5 issue of when you hire somebody as an expert, but
6 you don't pay them, you pay the firm and, in fact,
7 you designate them in their capacity as a VP of so
8 and so, I'm -- I'm just saying to y'all, that's an
9 interesting -- something I'm -- I haven't had to
10 look at yet.
11 Okay. But for the same reasons, this
12 is -- as I appreciate it, this relates to the same
13 thing that we've been around about on the
14 documents on Exhibit B, and so the same rationale
15 there, I think for -- to be consistent that this
16 will also come in as part of that, because I -- I
17 wouldn't understand what this was looking at it
18 without that explanation, but to the extent that
19 is what it is, for those same reasons, I think --
20 I think that it comes in. It's Mr. Peeples' own
21 work and he is designated as a non-reporter.
22 Next page. We're almost through this,
23 y'all. Let's see. We've got one, two -- I think
24 we've only got a couple more. All right. This
25 next one is 7788. This is No. 8 on the privilege

32 (Pages 122 to 125)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 126</p> <p>1 log. This says, redacted portions contain 2 privileged discussions relating to recent 3 development in remediation activities and 4 identification of additional tasks to be 5 performed, strategy for continued remediation, 6 contains information from field sampling performed 7 at the request and direction of defendants' 8 consulting experts, contains mental impressions of 9 testifying – non-testifying consulting experts. 10 Jim Peeples identified as a testifying expert in 11 this matter did not express an opinion relating to 12 these matters and did considered the facts or 13 materials in reaching the opinions for which he 14 has offered. I think this – is it agreed that 15 this falls into the same category as our prior 16 discussions, Mr. Coughlin? 17 MR. COUGHLIN: I'm – I'm looking at the 18 document, Your Honor – 19 THE COURT: Okay, sir. I'm sorry. 20 MR. COUGHLIN: – to see whether 21 there's – 22 THE COURT: Sure. Do take your time. 23 MR. COUGHLIN: – an additional 24 exception. 25 I would agree, Your Honor, that these</p>	<p style="text-align: right;">Page 128</p> <p>1 whether it's just going to be the same argument or 2 whether you want to make some other argument, 3 something different about it or whatever. Okay. 4 MR. COUGHLIN: Okay. 5 (Brief recess.) 6 THE BAILIFF: All rise. Honorable Judge 7 Jane Virden presiding. 8 THE COURT: Please be seated. Y'all 9 give me just a second to sort this stuff out. 10 Thank you. 11 All right. Have y'all had a chance now 12 to review the – 34 through 82 on Exhibit A. 13 MR. HUBBARD: Yes, Your Honor, we have. 14 THE COURT: Okay. Tell me where y'all 15 are having had that review. 16 MR. HUBBARD: So I think we've been able 17 to identify – I have been able to identify a 18 number of documents, all of which pertain to the 19 VI issue in the facility, and so all of the other 20 documents, we've already addressed and we 21 understand the Judge's position with respect to 22 the non-reporting expert and you understand 23 Meritor's position. But – and I will give you a 24 list momentarily about these other documents, but 25 these other documents all deal with discussions,</p>
<p style="text-align: right;">Page 127</p> <p>1 notes represent discussions with counsel that, 2 from our perspective, do not fall within one of 3 the three exceptions to Rule 26(b)(4)(C). 4 THE COURT: All right. And – and I 5 think that, for the very reasons the Court has 6 ruled as it has previously, Mr. Peeples is a 7 non-reporter. Even if that weren't sufficient, 8 this – these – well, further, that these – it 9 strikes the Court as – given the discussions 10 we've had, there are matters on here that are 11 certainly related to things that appear Exhibit F. 12 Okay. And then next page looks like a 13 continuation of that. In fact, through 91, all of 14 that is the same information, including – yeah, 15 yeah, I'll – those documents will be produced. 16 All right. Now – okay. Now we get to 17 take a break and y'all get to look at – if you'll 18 take Exhibit A and starting with No. 34, go 19 through there and we'll go through it too. We'll 20 go through it looking for ones – for entries that 21 don't involve Mr. Peeples. And y'all go through 22 it looking for – and it's – anything that 23 doesn't involve Mr. Peeples, we will put on a list 24 to discuss when we come back. Y'all go through 25 and look for where Mr. Peeples is concerned,</p>	<p style="text-align: right;">Page 129</p> <p>1 again, with vapor intrusion in the facility, and 2 we've talked about that already today. And, 3 again, I understand the Court's position on that. 4 But just I wanted – for the record, we wanted to 5 identify those specific documents that deal with 6 the vapor intrusion issue in the facility, because 7 those are not related to any of Mr. Peeples' 8 opinions that he's been identified for, and he is 9 strictly, at this point, a consulting expert on 10 those issues, and so we don't think those issues 11 and those discussions should be disclosed. 12 THE COURT: Okay. All right. Let's – 13 MR. HUBBARD: And so those are documents 14 in the log 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 15 48, 50, 51, 52, 61 and 74. 16 THE COURT: Okay. All right. Let's – 17 why don't we – we start addressing some of those, 18 and I'll hear from plaintiffs' counsel about them. 19 It may be after we've done a couple of – a few of 20 those that we're satisfied that whatever the 21 ruling is with regard to them would hold for the 22 rest of them or not. I'll let y'all decide 23 whether you want to continue through them all. 24 So why don't we start with 37. 25 MR. DEAS: Your Honor, are we – are</p>

33 (Pages 126 to 129)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 130

1 we -- I guess, are the defendants -- or is
2 Meritor, rather, taking the position that with
3 regard to all but the documents just named, we're
4 moving on and the Court will rule on those on the
5 same grounds that we discussed previously this
6 morning? I wasn't -- I wasn't clear on exactly
7 what was happening.

(Indiscernible cross-talk.)

8 THE COURT: Let me say so y'all can
9 correct me if I'm wrong, I think -- I think I
10 understand Meritor has identified a certain number
11 of documents that concern the vapor intrusion in
12 the facility about which they wish to make -- you
13 know, they want to have the Court further address
14 today, and their argument with regard to that,
15 which I think was maybe inferred or at least
16 mentioned this morning, but I think they're now
17 more clearly asserting that with respect to all of
18 those documents, Mr. Peeples, in addition to being
19 a reporting and a non-reporting expert, is also a
20 consulting expert for them and that they are
21 entitled to consulting expert protection because
22 of that. And I think my -- hearing that, I'll
23 have some questions like, did he become a
24 consulting expert as opposed to -- well, I mean,
25

Page 132

1 Mr. Peeples -- the subject matter that these
2 pertain to is vapor intrusion within the facility.
3 That does not have to do with his opinions that
4 we've been -- that he's been identified in Exhibit
5 F, which pertain to groundwater at the site. And
6 so we've talked about this earlier today, but
7 the -- for these vapor intrusion issues, at this
8 point, he is a consultant and we have concern over
9 it because to the extent that Meritor is adverse
10 to the EPA or the MDEQ regarding the current vapor
11 intrusion issues in the facility, that's a work
12 product in -- work done in anticipation of
13 litigation, and so it has the same work product
14 protection.

15 THE COURT: Right. And I'm only
16 concerned with this litigation, obviously, insofar
17 as what privileges and protections are at issue
18 here. In other words, if in fact it's been waived
19 in this, the fact that it's not waived in some
20 other case, is -- you know, I think the issue is,
21 is it waived -- or does it exist in this case in
22 the first instance?

23 But let me -- a couple of things about
24 that. The -- the matter of his being a
25 consultant, he -- you know, you first gave the

Page 131

1 he's still a retained expert and he's still a
2 non-retained expert as we sit here today, but
3 you're telling me that in addition, at some point
4 along the timeline, he became a consulting expert
5 as well; is that right?

6 MR. HUBBARD: Your Honor, I don't think
7 it's necessarily timeline, but it's a subject
8 matter where typically for a -- a -- every --
9 every expert starts out as a consultant, right,
10 and it's only -- and so he or she is doing work on
11 behalf of the -- of the -- of the client, of the
12 defendant or plaintiff, and that expert is
13 afforded 502 protection, attorney/client privilege
14 communication -- strike that. Not expert, it's
15 consultant, because that individual is still a
16 consultant at that point. They have
17 attorney/client privileges under 502. They also
18 have the work product privilege, the standard work
19 product privilege under consultants. And so for
20 that subject matter, a person is a consultant
21 until he or she is identified as a testifying
22 expert and he or she can be identified as a
23 testifying expert, either a reporting or a
24 non-reporting, and so it's not so much a time
25 period, but it's a subject matter. And here,

Page 133

1 example of somebody who's hired and you said that
2 he is a consultant until he is designated. But
3 you do -- I think you would agree with me that
4 it's not as if he -- once he's designated, he can
5 take the position that all of the stuff that he
6 did before he was designated in preparation for
7 designation is somehow protected, right?

8 MR. HUBBARD: In pre -- the important
9 part is in preparation for his designation. If
10 it's a topic, a subject matter that he's been
11 identified to testify about, then I agree.
12 Then -- then the -- then you have to look to the
13 testifying expert privileges and what -- which of
14 those do or do not apply. But if you have an
15 expert who's looking at something else unrelated
16 to those opinions that he's being -- he's
17 identified to testify, that other stuff, he can
18 still be a consultant on and there's still a work
19 product protection, the standard attorney work
20 product protection, over those that are under Rule
21 26(b)(3)(A), the ordinary --

22 THE COURT: Uh-huh.

23 MR. HUBBARD: Right -- and then once
24 he's identified as a testifying expert, then you
25 look to the -- to what's protected under

34 (Pages 130 to 133)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 134

1 26(b)(4)(A, (B) and (C).
 2 THE COURT: Okay. Again, let me ask:
 3 So Meritor's position is that although they don't
 4 have a start date, that whenever work was done on
 5 vapor intrusion in the facility, Mr. Peebles was
 6 acting not as a consultant but -- excuse me -- was
 7 acting not as a non-reporting or reporting,
 8 testifying expert, but merely as a consultant and
 9 none of the information he obtained in his role as
 10 a testifying expert from his role as a consulting
 11 expert is the subject of production because it
 12 does not relate to any matters on which
 13 Mr. Peebles has been designated to testify as a
 14 testifying expert?

15 MR. LISTON: I stand to be disputed by
 16 Mr. Deas who knows this material much better than
 17 I, Your Honor. But I disagree on both counts.
 18 First of all, if -- they're saying -- he's
 19 certainly not a consultant in this case. He's
 20 been designated. So if they're saying he's a
 21 consultant, it has to be in connection with an EPA
 22 regulatory matter.

23 THE COURT: Let's stop there and get
 24 clarity on it. I understood him to say he was a
 25 consultant in this case.

Page 136

1 what we were doing is we were trying to -- we were
 2 tasked with how would you -- what would you do to
 3 build something or do some remedial activity to
 4 protect the neighborhood. That was their
 5 assignment, and so they produced documents and
 6 invoices and things with respect to that because
 7 that was related to this case.

8 Those same experts have been working,
 9 before this case, on the AG case, trying to figure
 10 out a -- a solution for the entire facility -- for
 11 the facility, the neighborhood, everything in
 12 general. And when we asked their expert, did you
 13 produce all of that? They said, no, we only -- we
 14 produced the documents that are relevant to this
 15 particular project. And when we said, well, did
 16 you draft a report or have you done any other work
 17 in that other case, plaintiffs' counsel said,
 18 objection, that's protected by work product,
 19 because it's work that they're not doing in this
 20 case. It's work that they're doing in the other
 21 case, so you're not going to -- we're not going to
 22 allow you to ask about any draft reports and also
 23 not going to allow you to ask about any work that
 24 these same identified reporting, retained experts
 25 have done in preparation for the AG case.

Page 135

1 MR. HUBBARD: No, he's a -- this is the
 2 exact -- we deposed their groundwater experts and
 3 the same issue came up with respect to their
 4 groundwater experts. There is another case that
 5 we refer to as the Attorney General case --

6 THE COURT: Uh-huh.

7 MR. HUBBARD: -- where they -- the same
 8 group of plaintiffs attorneys are representing the
 9 State of Mississippi with respect to groundwater
 10 issues beyond the facility.

11 THE COURT: Uh-huh.

12 MR. HUBBARD: And when we deposed their
 13 experts, we looked at their -- in their report.
 14 In their report they said, we started working on
 15 this project in, I want to say, June of 2015,
 16 going forward. And then when they produced their
 17 invoices, the invoices were only from October of
 18 2016, going forward. And I -- we asked them, now,
 19 how is it that you've been working on the
 20 case since -- on this project since June of 2015,
 21 but your not -- you only have invoices from
 22 October 2016? They said, October 2016 -- and I --
 23 I think I have these dates right, but they may not
 24 be exact -- is when we started working on this
 25 specific Eastern Heights neighborhood issue. And

Page 137

1 So it's the same thing here. Here,
 2 we've identified Mr. Peebles for -- on Exhibit F
 3 as a reporting expert for topics related to
 4 groundwater in the Eastern Heights neighborhood
 5 and Moose Lodge Road, and he's done other work.
 6 He's done -- he's looking currently now at the
 7 vapor intrusion within the facility, which is --
 8 which is separate. I understand it's all -- it's
 9 all related, it's all -- we have these questions
 10 about TCE. But as far as the actual facility and
 11 the vapor intrusion within the facility and
 12 possible solution and interim measures on those,
 13 that's separate from his testimony regarding the
 14 Eastern Heights neighborhood which is what this
 15 current litigation is about. So it's the same --
 16 I think it's very similar to what -- what their
 17 experts have -- have done, how they've tried to
 18 parse the two.

19 MR. LISTON: May I respond?

20 THE COURT: You may.

21 MR. LISTON: Okay. Just to distinguish
 22 his example, talking about plaintiffs' expert, I
 23 didn't attend that deposition and I don't have a
 24 great recollection of what anybody told me
 25 occurred there. But I just listened to his --

35 (Pages 134 to 137)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 138

1 Mr. Hubbard's description. The question that was
2 objected to from a specially – that was
3 propounded to a specially retained expert, was
4 what's the content of your draft report, which you
5 don't have to disclose. And not only was that
6 question not about a draft report in this case, it
7 was about a draft report in another case. All
8 right. So it was twice removed. So that – that
9 is in no way similar to what's going on here.

10 May I comment on his – Mr. Peebles'
11 status as a consultant?

12 THE COURT: Yes.

13 MR. LISTON: If he was a consultant in
14 the EPA regulatory matter, then they would consult
15 with him. If they wanted to protect his opinions,
16 they wouldn't disclose them. But Mr. Peebles is
17 all involved with the EPA. There – he e-mails
18 the EPA. He discusses matters on the phone with
19 the EPA. They have taken no steps in the
20 regulatory matter to treat Mr. Peebles as what we
21 would consider to be a consultant in a litigation
22 matter whose opinions you never disclose. He is
23 their main point of contact with the EPA.

24 THE COURT: Well, you know, my
25 recollection is we – we discussed this issue this

Page 140

1 own vapor intrusion analysis in the neighborhood
2 in 2015, '16. And so those have been identified,
3 but with regards to the facility, there is no
4 report in those 18 that talks about vapor
5 intrusion, and these are the analysis for
6 potential remedial activities to deal with that,
7 to protect – and the sole purpose is protecting
8 the workers in the facility. It has nothing to do
9 with the neighborhood.

10 THE COURT: I understand that there's
11 nothing in the 18 documents that talk – my
12 understanding is from y'all, you being the
13 defendants, that there's nothing in those
14 documents that talks about the vapor intrusion
15 testing that is now going on in the facility.
16 However, there – the vapor intrusion testing
17 that's now going on in the facility relates to
18 things that Mr. Peebles plans on testifying on,
19 because the argument is, and it makes – you know,
20 it makes sense, that, okay, well, if it's high in
21 the facility, why is it high? It's high because
22 of the groundwater. Is the groundwater the same
23 here as it over there? Ergo, that's maybe why the
24 air over there is like the air over there. You
25 would expect it to be higher in a closed facility,

Page 139

1 morning, and one of the things that I recall
2 discussing was whether or not this vapor intrusion
3 issue is related to matters on which Mr. Peebles
4 has been put forth in Exhibit F, whether it
5 relates to any of the matters that are talked
6 about on Exhibit F. And I've been given
7 representations that, indeed, it does, that – and
8 y'all – anybody can correct me if I'm mistaken
9 about this, but my understanding is that this
10 relates to the – how the air got like the air got
11 in the facility is related to – or the – so the
12 argument is – and it is just an argument, I
13 understand that, by the plaintiffs – related to
14 how the air and – what's in the groundwater under
15 the facility because of the proximity of the two;
16 is that right?

17 MR. LISTON: That's our position, yes.

18 MR. COUGHLIN: You can have all of the
19 positions you want. The question is, what do the
20 18 identified reports talk about? None of them
21 talk about vapor intrusion or air modeling with
22 regards to Mr. Peebles. We have a separate air
23 modeler, it's Ranjit Machado. There was a
24 separate and distinct vapor intrusion analysis
25 done by Arcadis in 2015, 2016. The EPA did its

Page 141

1 you know, where the stuff is going. I – but, in
2 other words –

3 MR. COUGHLIN: It's not.

4 THE COURT: – the issue for me is, is
5 it related to these things that you have put him
6 up as an expert, a non-reporting expert for?

7 MR. HUBBARD: Your Honor, and if I
8 could, the – Mr. Liston is right. In the
9 deposition of their expert, it did start out
10 discussing draft reports. But one of their – one
11 of the main issues of that report was the cost to
12 do this fix, to do this neighborhood protection
13 and that they said in their report that they
14 addressed other proposals. And so when I asked
15 them about other proposals that they did, other
16 ways to possibly pump this groundwater or treat
17 it, there was an objection that this was done for
18 another case. And I'll read it to you.

19 It said: And did you cost out any other
20 potential remedies?

21 They said – and, answer: We
22 essentially came up with one alternative which was
23 a combination of pumping slurry wall and SVE.

24 Question: What was – relative to the
25 price of this fix, what was the price of that fix?

36 (Pages 138 to 141)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 142</p> <p>1 I --</p> <p>2 Mr. Deas: Stop, you asked him about</p> <p>3 work done on another case.</p> <p>4 Mr. Hubbard: In his report, they say</p> <p>5 that they evaluate alternative remediation and</p> <p>6 that's part of his report.</p> <p>7 Mr. Deas: This is not the alternative</p> <p>8 remediation that we're talking about. You're</p> <p>9 asking him about work done for a case --</p> <p>10 Witness: Yeah.</p> <p>11 Mr. Deas: -- for a case that's not this</p> <p>12 case that actually stayed. If you want to know</p> <p>13 what case it is -- and discovery is ongoing and</p> <p>14 it's work product privilege, and I'm instructing</p> <p>15 the witness not to answer the question.</p> <p>16 Mr. Hubbard: Okay.</p> <p>17 Mr. Deas: Pursuant to the Federal Rules</p> <p>18 of Civil Procedure, I have that right and I'm</p> <p>19 utilizing it.</p> <p>20 So it started out with reports, but it</p> <p>21 got to potential fixes and potential work that</p> <p>22 their experts had already undertaken that they</p> <p>23 told us we couldn't ask about on the work product</p> <p>24 privilege. It's -- it's a very similar topic</p> <p>25 here. It's work that Mr. Peeples is doing, not</p>	<p style="text-align: right;">Page 144</p> <p>1 are protected under the Work Product Doctrine,</p> <p>2 under 26 -- the standard Work Product Doctrine or</p> <p>3 under the 26 expert disclosure --</p> <p>4 MR. COUGHLIN: Your Honor, I want to</p> <p>5 address this thought that somehow these things are</p> <p>6 related. There's a groundwater plume under the</p> <p>7 facility where the levels are millions of parts</p> <p>8 per million. I mean, they're -- millions of parts</p> <p>9 per billion, significant raw TCE is actually right</p> <p>10 under the concrete in the facility, and that's all</p> <p>11 going down flowing towards Riverdale Creek. There</p> <p>12 is a groundwater plume, primarily in the deeper</p> <p>13 part of the aquifer, in the neighborhood that is</p> <p>14 not from the plant. The plaintiffs have no expert</p> <p>15 testimony that it's from the plant. In fact, they</p> <p>16 say, well, maybe, could have, I don't know. Did</p> <p>17 you do modeling? No, I didn't. I don't know.</p> <p>18 But there's no expert testimony by any of the</p> <p>19 plaintiffs' experts that TCE in the groundwater at</p> <p>20 the facility caused TCE in the neighborhood, in</p> <p>21 the groundwater, that there is this site --</p> <p>22 I guess if we had maps, we could do this better.</p> <p>23 There's a site east of rail -- right -- on the</p> <p>24 railroad yard that this hotspot it flows right</p> <p>25 under the southern end of the neighborhood, so</p>
<p style="text-align: right;">Page 143</p> <p>1 even for -- for another dispute, with the EPA and</p> <p>2 not on this case.</p> <p>3 THE COURT: But -- but two things: One,</p> <p>4 that didn't involve a non-reporting expert, did</p> <p>5 it?</p> <p>6 MR. LISTON: No.</p> <p>7 THE COURT: All right. And it didn't</p> <p>8 involve -- involve that. And, here, contrary to</p> <p>9 what you're saying, that it's not related to what</p> <p>10 he -- Peeples is expected to testify, they have</p> <p>11 articulated the basis -- an argument for why that</p> <p>12 is not so, that it is related. And let me -- let</p> <p>13 me remind you again, the whole question whether it</p> <p>14 relates or doesn't relate, because you have</p> <p>15 designated him as a non-reporter, my read of the</p> <p>16 Rule is that you may not grab ahold of Rule 26,</p> <p>17 the -- you know, 2010 post-amendment changes to</p> <p>18 it, in order to shield him.</p> <p>19 MR. HUBBARD: And we have -- Your Honor,</p> <p>20 we haven't. We haven't -- what we're trying to</p> <p>21 shield here are communications and work that the</p> <p>22 consultant is doing. We've produced a --</p> <p>23 thousands of documents that deal with the work</p> <p>24 that was done. This -- what we're facing here</p> <p>25 today are communications regarding that, and these</p>	<p style="text-align: right;">Page 145</p> <p>1 that's -- the question is, whose is that? We say</p> <p>2 it's not ours.</p> <p>3 So this whole issue of what's going on</p> <p>4 in the plant -- and remember that the Arcadis</p> <p>5 vapor intrusion analysis found there is no vapor</p> <p>6 intrusion from the groundwater in the</p> <p>7 neighborhood. The EPA's vapor intrusion analysis,</p> <p>8 there is no vapor intrusion in the neighborhood</p> <p>9 from the groundwater, both. Plaintiffs have</p> <p>10 nothing to rebut that. And it -- and so -- and</p> <p>11 they have no expert testimony that the minuscule</p> <p>12 amounts of TCE in the ambient air that are every</p> <p>13 once in a while found, most of the time it's</p> <p>14 non-detects, is from the facility versus some</p> <p>15 other place. They don't have any expert</p> <p>16 testimony. So at the end of the day, the question</p> <p>17 is, what is this case about? This case is not</p> <p>18 about the employees inside the facility which is</p> <p>19 what this is dealing with, and Mr. Peeples is not</p> <p>20 rendering an opinion in this case about VI in</p> <p>21 the -- in the facility and what causes the VI in</p> <p>22 the facility. I don't know.</p> <p>23 MR. DEAS: Excuse me --</p> <p>24 MR. COUGHLIN: Otherwise --</p> <p>25 MR. DEAS: You --</p>

37 (Pages 142 to 145)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 146</p> <p>1 MR. COUGHLIN: -- there are no 2 protections under the Rules that you can have a 3 consultant and the consulting expert privilege 4 applies and that -- and the Sara Lee case says 5 they can also be a testifying expert. And so long 6 as you don't reach across that wall and pull that 7 data and testify about it, you can build that 8 wall. Where have I heard that before? 9 MR. DEAS: Your Honor -- 10 THE COURT: Let him finish. 11 MR. DEAS: I'm sorry. I didn't mean to 12 cut you off. 13 MR. COUGHLIN: And there is nothing in 14 the 18 documents that demonstrates that 15 Mr. Peeples is reaching across that wall to talk 16 about vapor intrusion from the building at all. 17 And, again, he's not an air modeler, and so to 18 create a fiction -- and that's really what it is 19 is a fiction -- that this relates somehow in some 20 way to some of the allegations in this lawsuits, 21 that's not the standard under the Rules. It's 22 simply not. 23 THE COURT: All right. Go ahead. 24 MR. DEAS: Your Honor, there's so many 25 inaccuracies in that I'm not even going to begin</p>	<p style="text-align: right;">Page 148</p> <p>1 resolved in favor of permitting the requested 2 discovery. And even if everything 3 Mr. Coughlin said were taken as so, which it is 4 not, this would still be an appropriate case for 5 the Court to allow the discovery that we've 6 requested, because the line is too blurry. 7 THE COURT: Okay. I think I've heard 8 enough from everybody on this. Again, I think 9 all -- the genesis of all of this is this 10 designation of Mr. Peeples. He has been 11 designated, no matter what anybody else says 12 today, on paper, on the Court's docket, he is 13 designated as a non-retained expert on all of the 14 matters on that exhibit, which are thousands and 15 thousands of pages, and, you know, have I 16 pursued -- have I gone through the 10,000 pages? 17 No. Do I have access to them? No, they're not on 18 the docket. Nobody made them available to me. 19 But I have the representations that have been made 20 in court today about what's in those documents. 21 And I think that, based on his designation as a 22 non-retained expert on that wide breadth of 23 subject matter in this case, these documents 24 should be produced. Whether they'll ultimately 25 see the light of day in the trial of this matter,</p>
<p style="text-align: right;">Page 147</p> <p>1 because I know that's not what we're here for 2 today. When you're talking about consulting 3 experts who morph into testifying experts, and I 4 guess in this instance, then attempt to morph back 5 into consulting experts again, that situation has 6 existed, and as the Court mentioned earlier, the 7 law is out there. And the only way that you can 8 draw this line that Mr. Coughlin wants to draw is 9 when the subject matters -- and I'm looking at 10 Carroll versus Sharon Williams, which is out of the 11 District Court of Maryland in 2012 and they're 12 cases that follow it -- is when the individual is 13 retained as a consultant to deal with subject 14 matter that is completely separate, different and 15 has nothing to do with the subject of his 16 testimony. And that's clearly not the case here. 17 What -- what he is -- what they're claiming him to 18 be a consultant about is contamination at the 19 Grenada facility, which is precisely the same 20 subject matter that he's been retained specially, 21 as they say, and retained as a non-retained expert 22 to testify about in this case on a very broad 23 basis. And the cases are equally clear that any 24 time there is an ambiguity as to whether or not, 25 you know, the line has been crossed, it should be</p>	<p style="text-align: right;">Page 149</p> <p>1 as I said before, is a totally different matter, 2 but I think that the contamination at the facility 3 is related to what Mr. Peeples expects to testify 4 to, and it just depends, I guess, on how -- you 5 know, I don't think that that information is 6 relevant only to the workers there. I think -- I 7 can see how easily it would be relevant to what's 8 going on under the ground there, where's that 9 going, and so forth and so on. So it doesn't take 10 a whole lot of imagination for it to be related to 11 it. Now, if you had done a designation that 12 succinctly stated -- you know, did exactly what 13 the Rule says about reporting and non-reporting, 14 that would be a different matter. I'd have 15 something -- but you're asking the Court to go 16 through 10,000 or 6,000 plus, ever how many, 17 megabytes of information and demonstrate on your 18 behalf something that is counterintuitive given 19 what the case is about. So I think that, again, 20 it comes down -- and I do think there is ample 21 case law on this ambiguity question and I think 22 you're going to -- I think you just end up with 23 the short end of the stick, because I think you 24 were the architect of this situation. So 25 that's -- that would be my ruling with respect to</p>

38 (Pages 146 to 149)

Transcript of Proceedings 2/1/2018

<p style="text-align: right;">Page 150</p> <p>1 each of the documents that have been enumerated. 2 And I appreciate the fact that -- you know, the 3 further arguments, although, frankly, I didn't 4 hear really anything much different, although I 5 think you have highlighted that Mr. Peebles is 6 indeed -- was before and is now, while being 7 retained and non-retained, also consulting 8 according -- you know, in your position insofar as 9 vapor intrusive work -- intrusion work at the 10 facility is concerned, and I understand that. 11 So -- and I'm happy to go through each of the 12 others. Is that necessary or is this the same 13 argument with respect to the others? 14 MR. HUBBARD: No, Your Honor, with 15 respect to the others, I'd enumerate it the same. 16 THE COURT: Okay. 17 MR. HUBBARD: The same general argument. 18 THE COURT: Okay. 19 MR. HUBBARD: There are -- 20 THE COURT: Go ahead. Excuse me. 21 MR. HUBBARD: And there are two other 22 documents that Mr. Peebles is not on, which I 23 think we can briefly discuss. And I think after 24 that, we've addressed either every document or the 25 subject matter of every document so that we</p>	<p style="text-align: right;">Page 152</p> <p>1 and it would have -- it would have been 2 attorney/client privilege in that Mrs. -- 3 Ms. Furlough, as counsel for Meritor, is seeking 4 information to advise Meritor and then also it's 5 work product in that this work was done at her 6 direction in anticipation of litigation. And the 7 anticipation of litigation, although it was 2013, 8 it was -- this work that was being done was under 9 the auspices of administrative orders and 10 direction by the EPA and the MDEQ, and there are 11 cases that say that -- and we talked about this 12 with respect to the Brown and Caldwell documents 13 that there are cases that say that the type of 14 relationship and adversarial relationship between 15 the EPA and DEQs and property owners such as this, 16 there is -- it does rise to the level of 17 anticipation of litigation. 18 THE COURT: All right. I understand 19 y'all's argument is it's a 2013 document, so this 20 litigation wasn't going on and I guess that 21 litigation wasn't imminent enough and -- what do 22 you say about the attorney/client privilege? 23 MR. DEAS: What -- our position on the 24 attorney/client privilege is that this is 25 environmental advice she was asking for, not legal</p>
<p style="text-align: right;">Page 151</p> <p>1 understand the Court's position and I think 2 Meritor has voiced its position on those same 3 topics. 4 THE COURT: I agree. I agree with that. 5 There is -- I have one document and then I had two 6 others I wanted to talk to y'all about just 7 because they seem a little different than what we 8 talked about, but -- so I had No. 10 and which 9 other document did you have that you -- 10 MR. HUBBARD: 16, Your Honor. 11 THE COURT: Didn't I -- we didn't -- 12 yeah, you're right. Okay. I didn't -- I -- 13 sorry. I skipped over 16 when I went back there, 14 so that may well be the case. It probably -- I 15 mean, I'm sure it is. Okay. So let's talk about 16 those. 10 and 16. Let's -- let's just start with 17 10, I guess, to be -- to go in order. 18 MR. HUBBARD: So 10 is a note from 19 Mr. DeLaet, a T&M employee, regarding conversation 20 that he had with Linda Furlough who was in-house 21 counsel at the time or is in-house counsel for 22 Meritor, and the time period is 2013. And it 23 discusses work that -- that Ms. Furlough is asking 24 T&M to conduct, and in that respect, this is -- 25 this would have been -- Mr. Peebles is not on it</p>	<p style="text-align: right;">Page 153</p> <p>1 advice. There's no communication between an 2 attorney and a client. It's the Covell, Phelps, 3 Dodge issue with regard to the attorney/client 4 privilege. There's no reason, based on my 5 recollection of this particular set of notes, to 6 think that Ms. Furlough was seeking anything other 7 than environmental advice from an environmental 8 consultant. And there have been a number of cases 9 over the last 10 or 15 years where this particular 10 sort of conversation between an in-house counsel 11 and an outside environmentalist have been looked 12 at and that attorney/client privilege window is 13 very narrowly drawn. I don't believe this would 14 fall into it. 15 As far as work product goes, the 16 thoughts on that document, as I recall, were the 17 thoughts of Mr. DeLaet or DeLaet or however his 18 name is pronounced, not necessarily the thoughts 19 of Ms. Furlough. Even if you could say it was 20 somehow in anticipation of litigation, that 21 wouldn't necessarily make it -- make it work 22 product. I don't think it was in anticipation of 23 litigation. I think it's too remote to actually 24 qualify in this instance. But Mr. DeLaet's or 25 DeLaet's thoughts aren't protected by 26(b)(3)(A).</p>

39 (Pages 150 to 153)

Transcript of Proceedings 2/1/2018

Page 154

1 THE COURT: Let me ask Meritor's
2 counsel, why is Mr. DeLaet, in 2013, considered a
3 representative of the client or the lawyer's
4 representative?

5 MR. HUBBARD: Because in this -- in this
6 respect, he is being asked and Linda Furlough is
7 using him too assist her in rendering legal advice
8 to Meritor. Specifically, this -- this note is
9 requesting information so that she can advise
10 Meritor as to the setting of -- of reserves, of
11 what type of work needs to be conducted, the
12 position that they can take with respect to the
13 EPA and the MDEQ. As a lawyer, she needs that
14 expertise from an environmental consultant in
15 order to adequately advise Meritor on those
16 potential risks and liabilities.

17 THE COURT: He couldn't be the lawyer's
18 representative if she -- if he were a testifying
19 expert, but this -- this occurred in 2013 when the
20 case had not been filed and -- you know, I will
21 say this, as with many of these, the -- and I
22 think I can say this without disclosing
23 anything -- they're cryptic. And I -- you know,
24 given the date of 2013, the fact that it's with
25 counsel and -- I'm going to -- I'm going to find

Page 156

1 Meritor, dash, Scott. Do you have that? That's
2 all. There isn't -- the rest is notes.

3 THE COURT: What does that mean,
4 Meritor, dash, Scott?

5 MR. HUBBARD: Meritor is the subject
6 matter. Mr. DeLaet worked on a lot of different
7 matters, so this is -- there's a notation that's
8 Meritor and, dash, Scott, Scott would be Scott
9 Blanchard who is a geologist within T&M.

10 THE COURT: So Mr. Scott is with T&M,
11 and this is one T&M employee talking to another
12 T&M employee?

13 MR. HUBBARD: Yes. With respect to
14 discussing or identifying work that was being
15 conducted and -- or was being conducted by T&M at
16 the direction of counsel.

17 THE COURT: And what is the subject of
18 this, the balance of this? I mean, I can read --
19 I can read -- I think we can say, because we
20 talked about it earlier, CSIA. Is that -- okay.
21 So that's that same subject matter we were talking
22 about earlier with respect to T&M doing the actual
23 sampling, but not the analysis?

24 MR. HUBBARD: Yes, Your Honor.

25 THE COURT: Is the rest of this

Page 155

1 it protected under the attorney/client privilege.

2 MR. LISTON: Not work product, Your
3 Honor?

4 THE COURT: Not work product.
5 All right. And then the next one is 16.

6 MR. HUBBARD: Yes, Your Honor.

7 THE COURT: And -- okay. Let's see.
8 Handwritten notes convey information regarding
9 sampling work that's protected by work product.
10 T&M gathered the samples. Aren't these
11 Mr. Peeples' notes? Let me look at 16.

12 MR. HUBBARD: No, Your Honor, these are
13 again Mr. DeLaet. Mr. DeLaet has nice
14 handwriting, so this is his -- these are his notes
15 still. This is actually the last one of his
16 notes. And it is an internal meeting between --
17 or discussion with Scott Blanchard from -- from
18 T&M about Meritor, and it includes just a list of
19 items that they are -- that T&M is being asked to
20 do as part of the litigation support.

21 THE COURT: Let me go to number 16. Let
22 me look at it just a second.

23 MR. DEAS: Your Honor, we can't see who
24 was present.

25 MR. HUBBARD: You should -- it just says

Page 157

1 exclusively related to that?

2 MR. HUBBARD: No, the rest of this is
3 other work that was done as part of litigation
4 support and other work that was done as part of
5 T&M's remedial work and ultimately found its way
6 into the reports.

7 THE COURT: So ultimately found its way
8 into the reports on Exhibit F?

9 MR. HUBBARD: Yes, Your Honor.

10 THE COURT: All right. It's T&M and,
11 you know, I realize Mr. Peeples is not necessarily
12 cited here, but he's the vice president of T&M and
13 he is testifying on the subject matters that are
14 discussed at some part in here, so I'm going to
15 allow this to be produced.

16 Then the next thing -- y'all, the only
17 last thing I had was 81. If I can get to it. And
18 nobody listed it. And let me think what my
19 question was about it.

20 MR. DEAS: Did it involve Textron,
21 perhaps, Your Honor?

22 THE COURT: This is -- yeah. This is 81
23 and 82. Let me put my hands on it just a second.
24 Well, I guess what -- what had my attention here
25 is that this -- these are notes of a conversation

40 (Pages 154 to 157)

Transcript of Proceedings 2/1/2018

Page 158

1 that -- I think I can say this without disclosing.
2 These are notes of a conversation that was going
3 on between Ramboll, who is a testifying expert,
4 and Ramboll is a testifying expert for -- whoever
5 they're a testifying expert for -- I think they're
6 a -- that's a reporter, and Mr. Peeples, who is a
7 reporter and a non-reporter, and Ms. LaPratt, who
8 is a consulting expert and then some lawyers. And
9 so -- well, I guess I've made my rulings earlier
10 about -- you know, with respect to Mr. Peeples.
11 I -- you know, we were talking earlier about they
12 don't go down the hall and talk to one another,
13 Ms. LaPratt and Mr. Peeples, but here they are
14 having a meeting together about the site. So I
15 guess nobody -- okay. The -- my earlier ruling
16 will stand with respect to those doc -- those --
17 that document as well.

18 So let's see, y'all. Let's try to recap
19 here if we can and talk about timing. Despite the
20 length of today's hearing, I mean, it seems to me
21 that this is not -- you know, the rulings have
22 been based on some fairly narrow issues and now
23 that we've gone through all of the documents -- I
24 didn't want to just, you know, enter a ruling
25 based on -- without, you know, having a hearing

Page 159

1 and listening to you and hearing what you had to
2 say about related or not related and those kind of
3 things. But now that we've done that, I think
4 that we will be able to get you -- I've already
5 given you my ruling and I think the truth of the
6 matter is you know enough from -- right now to
7 work on whatever it is, if anything, you want to
8 work on to appeal said ruling. So -- you know,
9 what I would imagine I'll do is enter an order
10 that will categorize these documents, you know,
11 the Peeples' documents and these are the reasons
12 and the ones -- the few ones that aren't,
13 whatever. But I think in the end of the end,
14 this -- you know, y'all -- I can do the order
15 fairly quickly despite the number of documents
16 we've gone through and, you know, y'all should be
17 able to get your arguments before whoever it is
18 you want to. You know, I think Judge Brown would
19 be the first order of business if you want to do
20 that.

21 So anything else, y'all?

22 MR. HUBBARD: What is the process for
23 ordering a transcript from this hearing?

24 THE COURT: My understanding is you
25 contact the clerk's office. Niecy, help me with

Page 160

1 this if it's wrong. You contact the clerk's
2 office and you'll have to order a transcript. You
3 can -- and ask for the -- go ahead.

4 UNIDENTIFIED SPEAKER: I believe they
5 can contact the clerk's office who can provide the
6 recording for today and then you'll have to get it
7 transcribed.

8 THE COURT: Okay. That's the way it
9 works. Thank you, Niecy. So they'll give you the
10 recording that occurred today and then you can --
11 you know, I'll do my best to put down essentially
12 in the written order the arguments that I -- not
13 arguments -- the ruling and the basis for my
14 ruling, so, you know, maybe you won't have to go
15 to that expense, but you're welcome to.

16 Anything else, y'all?

17 MR. HUBBARD: My understanding, Your
18 Honor, it's a 14 day window for appeal from the
19 date --

20 THE COURT: Is it 14 days? Yeah, it is
21 14 days.

22 MR. HUBBARD: So that we don't have to
23 ask for a stay, I'm just wondering if the Court
24 had some ideas on production time that it's going
25 to put in the order or whether we have to request

Page 161

1 a stay as we appeal.

2 THE COURT: I guess you're going to have
3 to request a stay, because I don't think this case
4 is going to get tried on time.

5 MR. HUBBARD: Because a lot of these
6 issues that we talked about today will bleed over
7 into the other privilege log issue.

8 MR. DEAS: Which is on an
9 extraordinarily short lease.

10 THE COURT: What -- I'm sorry. Wait a
11 minute. Let me back up. What now? What did you
12 just say about a lot of these are --

13 MR. DEAS: Your Honor, there is an
14 outstanding privilege log with -- that's 1,917
15 items long that they haven't produced based on
16 these same claims of privilege that we talked
17 about today, largely, with regard to these
18 clawback documents, and we are -- the plaintiffs
19 are to file our motion to compel by February the
20 8th, so we've got to leave here, go home, sort
21 them into categories based on your rulings today,
22 call the defendants, ask them to, you know, relent
23 on some of them, see what their response is and
24 then draft one really long motion to compel and
25 file it eight days from today, which will make

41 (Pages 158 to 161)

Transcript of Proceedings 2/1/2018

Page 162

1 this look like, you know, a walk in the park, I
2 fear.
3 THE COURT: Well, all I can do -- all I
4 can do is take -- whatever you file, you know,
5 take it on in. And if you want to move for a
6 stay, then --
7 MR. DEAS: Can I --
8 THE COURT: -- file something asking for
9 it. Give me some authority for it, under -- what
10 the circumstances are in the case and I will
11 certainly get on this as quickly as I can.
12 MR. COUGHLIN: Not a stay of the ruling,
13 a stay of the production of the documents.
14 THE COURT: I understand.
15 MR. COUGHLIN: Okay.
16 THE COURT: Yeah, I do -- I understand.
17 A stay of execution of the ruling.
18 MR. DEAS: Which we -- we would -- yeah,
19 we've had to resist because of the breaching
20 deadlines that -- that are already set moving
21 forward in the case.
22 MR. COUGHLIN: The only side comment I
23 had, Your Honor, is your comment about -- I think
24 the case moving forward and dispositive motions
25 which are coming up in May --

Page 164

1 say all of the cases, except 52 for purposes --
2 not for purposes of discovery, but for purposes of
3 getting it -- to trying it and so forth.
4 MR. COUGHLIN: That's right.
5 THE COURT: And on dispositive motion
6 deadlines, right?
7 MR. COUGHLIN: That's right, Judge.
8 THE COURT: Okay. So that leaves us
9 with that. Then y'all filed a motion to sever.
10 You wanted to try -- you just want to try one of
11 those eight or ever how many plaintiffs there are
12 in that case?
13 MR. COUGHLIN: We believe, based upon
14 Judge Brown's instructions, I mean, if it's one,
15 it's Ms. Cooper. I mean, she's going right down
16 the pleading for trial. But we filed the motion
17 to sever because of the numerous differences
18 between the individual plaintiffs and issues like
19 summary judgment or -- I'm sorry -- statute of
20 limitations. There's a myriad of individual
21 issues that swamp --
22 THE COURT: Can you -- y'all know that
23 motion is not before me.
24 MR. COUGHLIN: I know.
25 THE COURT: So -- but my suggestion

Page 163

1 THE COURT: Yeah -- April, I think.
2 MR. COUGHLIN: -- we still don't know,
3 are we briefing one summary judgment or ten
4 summary judgments or eight or what are you doing
5 with the two plaintiffs in the Cooper case? And
6 that does present a problem for all parties.
7 THE COURT: All right. Let's talk about
8 that. I'm not sure I'm following what the
9 issue --
10 MR. COUGHLIN: There is a motion to
11 sever that was decisional in early December --
12 THE COURT: Uh-huh.
13 MR. COUGHLIN: -- and that impacts
14 our -- is there one case going to trial in
15 November, one plaintiff? Are there ten plaintiffs
16 from the first Cooper case, or I think the
17 plain -- you guys got to do something with at
18 least two of them, and who -- one has a personal
19 injury claim, they -- but that's beside the point.
20 But the motion to sever impacts, truly, how this
21 case goes forward and the efforts of all sides to
22 brief the issues.
23 THE COURT: Well, a couple things: One,
24 is, my recollection, and y'all correct me if I'm
25 wrong about this, but I thought that we -- we did

Page 165

1 would be -- obviously, you have a limited amount
2 of time to worry about filing anything extra. I
3 don't think -- I frankly don't think calling will
4 necessarily help you, but I don't -- I'm not
5 discouraging you from calling judge's chambers
6 and, you know, asking to speak to the law clerk
7 assigned to the case and seeing what could happen.
8 I don't know what might happen, including, you
9 know, you don't get to talk with the law clerk. I
10 just don't know. But if you think you've got a
11 real meritorious argument about why it needs to be
12 ruled on now and how detrimental it would be if
13 it's not ruled on, you know, you might consider
14 filing something to advance that position. But,
15 again, you know, y'all got a lot to do. Boy, I'd
16 pick those fights carefully.
17 MR. COUGHLIN: Well, that's --
18 MR. HUBBARD: That would help --
19 MR. COUGHLIN: The amounts of summary
20 judgments that have to be filed and the analysis
21 and the amount of paper the Court is going to get
22 hit with is significantly different.
23 THE COURT: Well, that's true. But, now
24 remember, those aren't due, as you said, until
25 some time in May. so there is still some time

42 (Pages 162 to 165)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans

Transcript of Proceedings 2/1/2018

Page 166

1 before you'd actually start working on those
2 because they're going to have to file their motion
3 first. They're the ones that would be first out
4 of the block on it.

5 MR. COUGHLIN: We are.

6 THE COURT: I'm sorry. I'm sorry. You
7 file -- yeah. I'm forgetting where I am. I've
8 been up here too long. Anyway, yeah, y'all will
9 have to, and so you will have to start sometime in
10 advance of that, but not immediately, so -- when
11 did you file that motion in terms of -- was it
12 before or after September 30th?

13 MR. COUGHLIN: It was back in November.

14 MR. SYKES: It's Docket No. 415.

15 THE COURT: Okay. It was after
16 September 30th, so it's -- it's not reportable
17 until -- you know, the Rule is -- I think I talked
18 to y'all about this.

19 MR. HUBBARD: At the time, when we had
20 the joint status conference with Your Honor and
21 Judge Brown, the plan was the -- was that that was
22 going to be decisional by the middle of December
23 or even before December, because at that point, we
24 wanted it briefed and decisional so that y'all --
25 so Judge Brown could give us a ruling so that then

Page 168

1 you feel better.

2 MR. COUGHLIN: Thank you. I appreciate
3 that.

4 THE COURT: Wait, wait, one minute,
5 y'all. Niecy, who is knower of all things --

6 MR. SMITH: Judge, I'm having some
7 trouble hearing you.

8 THE COURT: I'm sorry.

9 MR. SMITH: Are we free?

10 THE COURT: No, we're not quite through.
11 My law clerk has asked to speak to me a second, so
12 I'm speaking to her for just a second.

13 MR. SMITH: Okay.

14 THE COURT: Okay. I think -- I think
15 we're done. Thank y'all.

16 COUNSEL COLLECTIVELY: Thank you, Your
17 Honor.

18 (Audio recording concluded.)
19
20
21
22
23
24
25

Page 167

1 we could move forward with our motions for summary
2 judgment. Because the discovery deadline got
3 moved, the trial date got moved, the motion for
4 summary judgment deadline has gotten moved, the
5 need to file -- to rule on that motion to sever
6 has kind of gotten lost, and so we're just trying
7 to -- if there's a way you can help us or a way we
8 should bring it up to the Court's attention,
9 that's what we need to do, so...

10 THE COURT: I -- like I say,
11 different -- and y'all know this, different judges
12 are different about things. I don't see how it
13 could hurt. I'm not telling you to do this. But
14 I don't see how it could hurt to at least reach
15 out to the law clerk to just say -- a lot of times
16 you might think that it hasn't done any good, but
17 in fact it has, and sometimes -- I mean, at least
18 with my chambers, you know, we've overlooked
19 something, so call us. But, anyway, but really
20 beyond that, I really -- y'all, I hear you, but
21 that's really about all I can do about that.

22 Okay. Anything else guys?

23 MR. COUGHLIN: I think we need to hit
24 the road, Judge.

25 THE COURT: I know. And, again, I hope

Page 169

1 CERTIFICATE OF COURT REPORTER
2 I, Nikki L. Lloyd, Court Reporter and
3 Notary Public, in and for the State of
4 Mississippi, hereby certify that the foregoing
5 contains a true and correct transcript, to the
6 best of my ability, of the proceedings, as taken
7 by me in the aforementioned matter via audio
8 recording, as taken by stenotype and later reduced
9 to typewritten form under my supervision by means
10 of computer-aided transcription.

11 I further certify that, to the best of
12 my knowledge, I am not in the employ of or related
13 to any party in this matter and have no interest,
14 monetary or otherwise, in the final outcome of
15 this matter.

16 Witness my signature and seal this the
17 19th day of February, 2018.

18
19
20
21
22
23
24
25

NIKKI L. LLOYD, CCR #1870

My Commission Expires:
April 30, 2021

43 (Pages 166 to 169)

Jackson
Gulfport

Brooks Court Reporting
1-800-245-3376

Meridian
New Orleans



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 25 2018

The Honorable Bennie G. Thompson
House of Representatives
Washington, D.C. 20515-2402

Dear Congressman Thompson:

Thank you for your letter dated August 29, 2018, to Andrew Wheeler, Acting Administrator of the U.S. Environmental Protection Agency, regarding environmental hazards in Eastern Heights, Grenada, Mississippi, associated with the Rockwell International Wheel and Trim Superfund Site (or "Rockwell Grenada Site"). Your letter was forwarded to my office for response.

The EPA's priority is to protect the health of workers at the facility and residents of Eastern Heights. The EPA has directed and performed extensive sampling in Eastern Heights since 2015, including sampling this May, June, July and August. The EPA continues to perform sampling in Eastern Heights to thoroughly characterize Site conditions, and interim actions will be taken immediately if any unacceptable risks to human health are discovered.

The EPA transitioned oversight of the Site cleanup to its Superfund Program to complete a more comprehensive response and investigation in December 2017. Since that time, the EPA Region 4 Superfund Division has completed the following:

- To protect facility workers' health, the EPA initiated a time-critical removal action on December 29, 2017, to restart a treatment system and reduce elevated levels of trichloroethene (TCE) in air inside the facility. The EPA oversees the system.
- On March 13-15, 2018, the EPA conducted community interviews and asked residents for input in identifying additional areas that warrant investigation for contaminants. The EPA incorporated information from these interviews into the Remedial Investigation (RI) for Eastern Heights (described below) and a Community Involvement Plan.
- On April 28, 2018, the EPA held a community workshop to explain the Superfund process and introduce community involvement and technical assistance opportunities.
- On May 11, 2018, the EPA finalized the workplan for the Eastern Heights RI. The EPA prioritized, funded and accelerated this work. The EPA will seek to recover the associated costs from the Potentially Responsible Parties (PRPs).
- On May 15, 2018, the EPA held two community availability sessions about planned sampling in Eastern Heights and answered questions.
- As part of the ongoing Eastern Heights RI, the following work has been performed:
 - Four rounds of outdoor 24-hour air sampling events were completed by the EPA in Eastern Heights in May, June, July and August 2018. Since June, the EPA has also performed ongoing outdoor air sampling over longer durations (21- to 28-day periods) in Eastern Heights.
 - Additional sampling activities in June, July and August 2018 included groundwater, soil and soil gas in and around Eastern Heights.

- The July 2018 sampling event included vapor intrusion sampling (indoor air, sub-slab soil gas, and outdoor air) at 12 homes in Eastern Heights located above the contaminated groundwater plume. The EPA also sampled a residential drinking water well located south of the facility, at the request of the owner.
- All results are posted (once validated and individual property owners are notified) on the EPA's website at: www.epa.gov/superfund/rockwell-intl-wheel. To date, results from all of the EPA's sampling for site-related contaminants have been within the EPA's acceptable risk ranges.

You raise concerns that the levels of contaminants in some areas of Eastern Heights are above either the EPA's maximum contaminant levels (MCLs) or screening levels. An MCL specifies the maximum level of a contaminant allowed in finished drinking water. Though groundwater in the southern portion of Eastern Heights is contaminated with TCE and other Site-related contaminants, it is not a source of drinking water. The EPA uses both Regional Screening Levels (RSLs) and Removal Management Levels (RMLs) when evaluating soil, air and water data. Exceedance of a RSL or RML by itself does not imply adverse health effects will occur. RSLs are the first screen used to determine if a detected contaminant should be evaluated further. If an RSL is exceeded, then the EPA evaluates the data against the RML for that contaminant. RMLs are amongst the factors that may be used to support a decision for the EPA to take a removal action, as we have done at the facility by installing a treatment system to reduce elevated levels of TCE in the indoor air. The EPA's sampling to date has found some exceedances of Site-related contamination above the RSLs in Eastern Heights, but none above the RMLs.

We appreciate you sending the information from the recent sampling conducted on the residents' behalf showing elevated levels of Site-related contaminants in indoor and/or outdoor air in Eastern Heights (referenced in your letter as "Exhibit J"). We held a call with Ted Lyons, attorney for a number of the Eastern Heights residents, on Tuesday, September 4, 2018, and requested a copy of the full methodology (including the sampling plan and quality assurance plan) and all resulting data. Some of this information was received on September 23, 2018. The EPA will continue to evaluate all data to identify the source of the contamination.

The Rockwell Grenada Site was proposed to the Superfund National Priorities List (NPL) on January 18, 2018, and finalized on September 13, 2018. Adding the Site to the NPL will advance a comprehensive cleanup to address all contamination—at the facility, in Eastern Heights and in other surrounding areas—related to former operations as expeditiously as possible.

To ensure that the EPA fully answers all your questions about the Site, I have asked my staff to set up a call or meeting with you. Allison Wise, in the Region 4 Office of Government Relations, will be contacting your office to schedule the call or meeting.

Sincerely,



Onis "Trey" Glenn, III
Regional Administrator

Send 200 to facility.
common areas
bulletin board

Relied on trust system.
3 shift cycle for workers

Grenada website

Long term BCRA site
available.

Complete the website
today!

Journal Notes Start here!! A.A.

1-9-17 Calls to City, County
to inform about NPL
proposal. Talked Troy
Baker.

Called City Manager, Troy Baker
Troy B. What does listing include.
Report on website that
shows how NPL decision
was made. Neighborhood not
involved.
Email him a figure.

We follow the contamination.

What will E. Heights expect
will write

OK Lewis Johnson Senior Citizen
Meeting 2nd Monday Feb 12
14th Valentine
Ask before finalizing meeting
date.

CH4 - Eastern Heights

Ex: Quick & Dirty of Superfund
process / Greenada Stampings
(good company & Greenada)

more investigation
study remedy
select remedy
design
built

ADCA
old landfill
Permeable wall

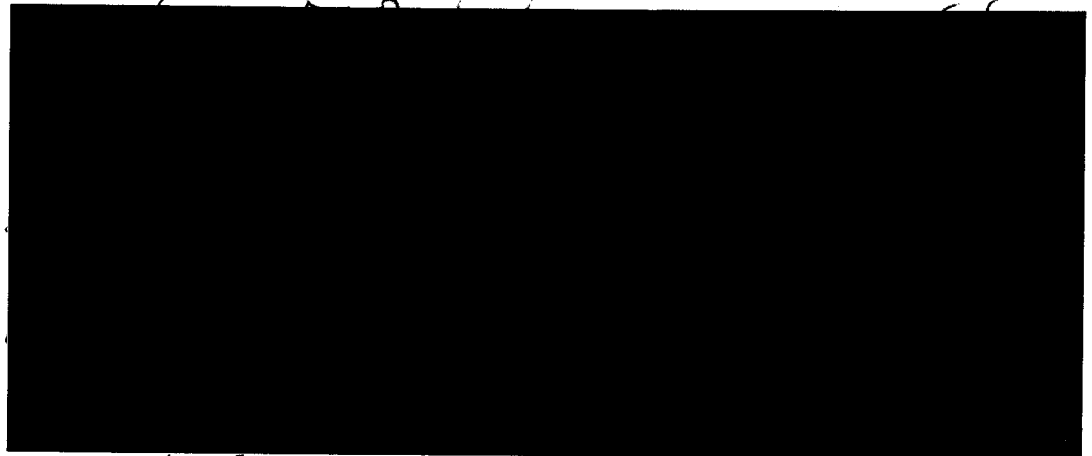
- Will pick up on each area being investigated
- Negotiate w/ PRP to do work
- Will not happen quick

Q Initial impression of
safety of site, what EPA
will do as remedy.

A Continue work @ facility and
the site.

Q Where are we trying to get
and enhance bio-remediation w/
critters, etc.
Creek being monitored
Remedy to protect the creek.

Q



Ex: not fully characterized

b. Pass logistics to council
what would mean to Greda
and neighborhood.

Cathy: Do not know what sounds
would look like. Facility
will continue to operate.
Neighborhood - no expectation
of relocation. Clean up
can be done in place.

G. ~~As~~ Anything they could do.

C. File in public meeting. He is
the gate keeper.

meeting: Jan 18 -
meeting date:
meeting time:
Place:

60 days



Conf call w/ Hester Group

FOLKS WHO MAY ATTEND THE MEETING:

Abera Ajanaku

Cathy A.

Shelby J.

Steven Spurlin

Caroline Freeman

Don Higger

Derek Matney

CI/EPN

Risk

Darlene H. [unclear] [unclear]
Franklin H. [unclear] [unclear]

Lynn Chambers -

Collier -

Jimmy Crellin -

Phillip Weathersby -

City:

Tony Baker, City Manager

County.

ATSL

John Wheeler, MHA

MO DASH

1-22-18 Meeting w/ Cathy: 6:00-8pm
Agenda
Power point
FAQs

John Wheeler - ATSDR
He is lead for EPA

Forming CAG, TALA

- double ck on Keri's 2.
Arrive to 30th meeting

One Drive

1-25-17

+

0

(

.

+

f

l

.

(

1-25-17 Rockwell/Community

of people coming to the meeting
a concern

Community Download

Introductions "Trey open meeting"
Explain Breakout

After I bring
Incorporate transfer from RCRA
to Superfund

Call Brian up - transition, EW
from RCRA to Superfund

Trey Facilitate the meeting

~~the~~

Flexible

Why it took so long

Trey: open w/ purpose

hand off site from RCRA
to CERCLA

Franklin

Abena - slide

Sue

Q & A

Breakout

Trey & Abena

Community

[REDACTED]
Mother

Father: [REDACTED]

312 Lyon

Agenda A — Agenda B

- Community attorneys will be there,

Reid Stanford

- Lawyers from Texas -
Call:

Charlie Mac phone #

* Richard Elliss - #

Frank Rimmer - #

Yard Sign

Ernest Hargroove

- Joshua Hughes ^{city} Councilman

- Lewis Johnson ^{city} Councilman
↳ Air Port Cir area

MDEQ

Media -

Ann Wolfe - Clarin Ledger

Reggie Ross - Clarin Ledger

Reid local Secretary - Cathy

Ask Jackie & Angela about
Video camera & tripod

Get there early/

Notification:

* Tell Duina to add NPL website
to RCRA web - paragraph link to
fact sheet also

✓ Drinking water fact sheet

Talking Points

CI slides
contacts:

postor's

- superfund process

- ~~submit~~ comments

- comment card

- page for develop

comment instructions

- CI Information

- Site layout

Foam Board -

"Fact sheet look"

reg.gov or mail (address)

2-26-18 Conf call on Rockwell

1-30

public meeting

Topic: Agenda for the public
code: 1704 meeting and presentation

*6

*6 mute
#6 unmute
Attendees: Cathy, Ben, Abena,
Stacy, Shelby, Kevin,
Brian, Don, Davina, BB,

Franklin onboard / does not
want break out session

Jan 31st Conf 11B on 31st

Talking points prepared

Franklin in for 4pm meeting
Onboard about Trey

5:30 media session /

NPL
Remedial
Removal

- Site lay out
Map -

What

Where

How to submit comments

Remedial process
Map layout
Form

6
57

1-30-17 Meeting for Rockwell

Topic: Feb 6th Public Meeting

Attendees:

David, Steve, Shelby, Allison, etc,
* Caroline, Abigail, Cathy

- Stephen needs to be @ the meeting because other attorneys will be there. (Still a question)

Cover
2 slides

Community Involvement Workshop

- Checking to see if Stephen will stay on the legal for remedial
- One pager (Cathy, Steve, Shelby)
- ~~Not~~ for Trey

Cathy is consolidating TRs into one document.

Press release was released today!!
5:15 - 5:45 Feb 6th

(Agenda for 2 days)
with meetings planned / time
5:15-5:45 press availability @ center
6th meeting w/ Trey etc

7th

Shelby planning MDEQ tech meet
for morning or end site tour

Cathy: will have back-up power
point

1-31-17 Rockwell Internal Discussion
Public Meeting 2-6-17

AL 25 21 Aug 1964

12. 11. 1950

2-6-18 Meeting w/ City Manager
Trey Baker
Joshua Hughes / Ward 5
MBEA

Lewis Johnson - Riverdale
Crest in his District.

Want to bring resolution
- look at what makes sense
to clean up site.
- ensure protection
community & workers

Close communication gaps

Questions:

1. Purpose of meeting tonight

2. Is the neighborhood in the
Superfund Site.

3. Modify the map / community
feels they are left out
of the Superfund site
boundary (map confusing)

Johnson: Human Right issue

- high rate of cancer
- high fatality
- feel they are being
pushed back.
- want to save & not live
- EPA not doing enough

• Hill - Primary function protect
human health
Close call on who is responsible

Hill

Hill -

Tonight

will
EPA

Hill

read

Trey

Trey

Language in text sheet leaves
out community.

Hill - ~~Herndon Heights~~ Eastern Heights
may think hard
about being on NPL list.
Should not have put the PRB
up / should attack source

Hill - Message: every situation, get
voice heard then shift to get
to resolution.

Tonight - Ensure difference of agencies
and make sure

11-12 Jennifer Adams - wrote letter to
EPA and EPA sent back a form letter.

Hill Will take an interim action if
we find a hot spot.

Congressman wants the letter
read first tonight.

Trey - how do we ensure someone
take responsible for CEC
in neighborhood.

Trey Clay layer - stops VI issues
can we find a way to disprove
this.

There is evidence that there
is a fence stopping vapors. This
was noticed after gas vapor soil
sampling was done.

Hughes - lawyers are telling residents
that vapors are in the
homes.

2-8-

Johnson What is timeframe?

Action Items:

- New Boundaries
- Enforcement on folks
that cause plume.
- Address lady w/ benzene
issue.
- How quickly start the
RI process.

-

5
2-8-18 Congressional Call to respond
to Congressman Thompson meeting

Ladies home w/ Benzene

1. Is done

Clay layer included, use our own
resources, time frame

Thanks for suggestions. Will
take in considerations the best
and will address as we get close
to the remedy.

Strong message

Timeline - moving forward
expeditiously / will not wait
until site is listed. Prepared
to move forward, if DAP not
act in a timely manner.

Get input from Cathy OK.

RIFS will determine

Next month we will go back
to the community for interviews.
Take Shay let her point to areas
that may need remediation

Letter goes in →

RIFS workplan in place
quickly. Need statement of
work. (Recovered cost possible)

Timeline for RI/FS
If we see we can take
10

2-15-1

Hoping that we are
ready for

Schedule - Early April meeting to
kick off RI - FS.

11:30 - 2:00 Caroline open

Friday morning - ~~9:00~~ 9:45

2-9-18 Conf. call about Congressional
letter -
Shelby Derek
Ducina Caroline

Look into dates on access
agreements.

2-15-18 Conf call w/ HGT's C
CIP1 Branch

Abena, C' Tonga & Tina & Leaha

15

20

2-15-18 DeBriet from Grenada meeting
10:00 am
Tues / Thur - Community Interviews
March

Need to review Schedule
for OUI

Timeline on enforcement
Stacy has been requested
for the site.

1st round field work in May

Eastern Heights - Fund Lead

Write up about what is
planned for March.
Presence honoring commitment
Franklin made.

Enforcement letters have
gone out on Removal.
Provide Trey steps in
the enforcement process.

Send Shelby the questionnaire
for review to capture info
needed for the investigation.

Start setting up
interviews

Subslop and ambient air
sampling, again.
SESD - sampling by 27th March

Reggie Ross - Grenada Star

2-27-18/10

Removal
notice
letter

a very important / special person

Tour the Site w/ residents?

On the figure smooth the boundary line & move EHN to inside Boundary.

- Call Steve for an update

- Narrative on back of figure
Cover letter / will send
colored hand / narrative about
community interviews
(email to Trey Baker by Friday
working to expedite investigation
@ Eff community / RI Kick-off
in April.

Get it on the website

2-27-18/10:00 Rockwell Grenada Update Meeting

Kevin Woodruff

Stephen

Davina

Brian

Cathy

Abena

Derrick

Merritor still working on PRB,
Brian is forwarding all emails
to Cathy & Shelby
Merritor expecting a

Removal
Notice
letter { Merritor
ICE
Textron
County

will include AOC - memorial what already
is being done

Monitor (PRPs) will submit
workplan per ACC

Action letters routed early
next week.

1st letter out the door, Action Ho-
timelike
Conference call to discuss, etc.

Not including financial assurance in
ACC.

When ACC - Enforcement for remedial
side.

2-27-1

delivered April 23rd boots on ground:
- Continue Remedial inspections
- New figure of site

OU1 - Eastern Heights
sampling for Statement of work RI/FS
entire work Well Survey soil/gw
Look at entire site
review existence
data gap analysis/

Expect memo from Ann.

- April 2016 factsheet -
August 2016 -

Approval of work on PRB

* Community Interviews list (date & Time)

Factsheet RI Kick-off
comfort level w/ Monitor coming

- Grenada Mart is in bankruptcy

Remedial:
City/County

Need to confirm if remedial
is EPA lead?

Sleeping meeting on 1st w/ B&V
@ 12:00 am

End of March Act/Action letter
for remedial.

2-27-18 TASC Kick-off meeting

Shelby
Tonya

Athena
Tina Conley
Eric Marsh - Steel
Coor for Reg'd
projects
Emily Chi
TC Manager for 16
CIP Support

TASC #16
CIPs & TANA

- Tech Dir frame support activities
- anything needed support community

- CIP, TANA discussion questions
- Training presentation

Emily & Eric

- Post question on website of
hot day & time for workshop.

We will mail out the Flyer.
created by contractor.

3-16-18

Send to 14th floor/protrac
Rachel

Davina → protrac (3 day
process)

Site information -

- Materials

- send Emily Figure

- Power Point

3-19-18

Print out of superfund
process, as a handout.

Handouts & budget for 2
posters.

Post information sheet

action * ✓ Share my questions w/
Emily & Eric and will get
back to me by early next
week.

2-w

action * Review tech approach &
respond.

et.

3-16-18 Cont call w/ Deborah Ortiz / EJ

code: [REDACTED]

Concerning Superfund 101 Workshops

Scheduled for April 28, 2018

true

day
process)

3-19-18 Website: conversation w/ Davina
- updated the tense of some info
- revised the info pertaining to
transitioning from RCRA to
Superfund. Now says more
of what is in the Factsheet

Hempkill:

Scoping

Johnathan, Debbie

Stephenie, Callette

2-weeks

Factsheet - mailed out #needed

envelopes - will be

addresses in excel spread sheet

PN - 2 weeks

April 3rd or before (Factsheet & PN)

For see media -

At location 1 hr ahead
will arrive

Rockwell 4/28 Superfund
Workshop Support under
TASC Cont call

LaTonya -

Don't want to see the same
thing that

Keep telling them that relocation
is not an option.

Get w/ Shelby, how we
answer relocation questions

How we are going to coach
relocation. talk to management
about it

Workshop:

- Talk about relocation 1st.
- Michael Lippcott - worked in
(Claire - Emily) relocation
need southern cultural
- or - Vernice -
- Need racial diversity -

Flyer - mail

- ~~newspaper~~ Sr. Citizen
- website center
- email
- library

4/4/18

Eric, Tina, Emily, Tonya
Only one is available at that time
on the 28th
Michael & Emily available
Tech Advisor - c - 1

check w/ Shelby on giving a
short historical of site
- common resources

• CAG

• TAG

Michael - Superfund Process
• Effective Communication

Michael - facilitator Roll

Summary due @ end of Workshop

write down questions and
hold till the end.

After workshop debrief after
w/ Skee

Adena - explain @ the end

Let Shay speak ~~1st~~ & give
~~opening~~ closing remarks

Mr. Kimmer

Based on what you've heard

4-4-18 Conf. call on

Michael, Eric, Tonya, Adena
Lipote

Emily & Michael

Walk:

History - EPA

Relocation - EPA

logistical
Word

Agenda - w/ Drew
Workshop 9:00 - 12:00

*
—
be
—

15 min Welcome
15 min Introductions:

- City
- residents

30-45 min
Shelby - Overview of Site / Relocation
• have fact sheets / Q&A

Reason to relocate:
- continue risk to community
- if we have to demolish house
to get to contamination

Facilitator: What we
want to accomplish / manage
the time.

1. Superfund Process / Q&A

3. CAG / Q&A →

4. TAG / Q&A

Emily 2. Community resources / Q&A

~~Wrap Up~~ from EPA
Next steps

Wrap Up

Status of plumb? still working
on it / Covers how the
Southern 3rd of neighborhood

Note:

* Logistics:
contractor - see if they had
to complete doc for use of

VI

- * Will send presentation out to community in email after meeting
- Look @ resource slides / may need to revise / will resources be available in a yr from now.
- Look for success stories
- one south of Canton, MS have this in your pocket.

Conference call w/ Meritor pertaining to Arcadis

John Ellis - ~~Meritor~~ Kevin Kaporic EPA
 Dave O'Connor - Meritor - PM
 Rob Opencamp - w/ Arcadis tech resource

EH - ambient air concern, VI (keep eye comfortable w/ EPA sampling on)
 Summer air sampling
 May - sampling in EH
 Plan - next week
 It will be provided to E.H.

Compreh gw reports: rec'd last month from T&M
 Wells are permanent - from T&M report. Will get back
 VAP wells are gone

Note: Send Emily pictures taken by Debbie @ the Feb 6 public meeting

VI - Plan to resample previous homes sampled.

We mite do soil gas sampling
 2015 - 2016 Arcadis Report Vapor
 Intra Assess Report 6-12-17

Sampling in Drainage,

~~2017~~

2018

Access

Sampling plan will be part
of the RI Fact sheet

EPA is Not opposed to split
sampling.

Action - Send Stephens copies of
interview forms sent to
Allura.

Action

Briefing meeting w/ Franklin:

Susan Hansen

Steve Spurlen

Defend listing

Investigation in n
Communication in neighborhood
& what we have done

Listing 147 Meritor
- Comments - 105 documents
- Where are we
- Tech Challenge

Status -

Comments / Summarize
Rule making is alive
Headtr will respond to comments

Things stay away from
removal - sent notice Htr

Outline

Rulemaking process
RI

SESD - what it's doing / what where we
are now

Community
What have we done since listing

What can he do to help us move
forward

10:30 Brief

30th

7.

ood

5

Grenada ~~Fast~~ Fasteners

4-26

1996 - ~~2008~~ 2010

last 5 yrs were furnished
gloves. Before then handled
drums.

Was in the drums:

Solvent 140 / NAPTHA

Heatcraft → Nevada

Health concerns:

Fistula

South →

1518 Muff Dr.

Grenada

new Grenada Fasteners bought
chemicals from
Grenada Manufacturing

Behind Grenada Fasteners there
is a stream where there
was a fish kill.

5

shed
ed

4-26-18 Called to let residents know we will be coming (in May) out to sample for VI (indoor, sub-slab, outdoor air) and also ~~possible~~ soil sample. @ the community's request. We have a consent for access to your property that you signed ~~on~~ April 26 2016 and wanted to know if you would be ~~still~~ okay with us coming out to sample your property

Also, will you be attending the Superfund workshop in the morning?

it

9

c

- [REDACTED] - left message
- [REDACTED] - Yes to Access and coming to workshop
- [REDACTED] - mail box full
- [REDACTED] - left message
- [REDACTED] - mail box full
- [REDACTED] - left a message
- [REDACTED] - left message w/his brother to call me
- [REDACTED] - left message w/ someone who answered
- [REDACTED] - mail box full

4-30-18 Technical Meeting w/ Merritor

5-2

Pre-Brief meeting w/
management

David O'Connor

Heidi

Taady

Jim Prople

Joel

MDEQ

Lynn Chambers

Willie

Well will extract from AOC

Full scale

Extraction well - 55'
will remove great deal of mass
from AOC

In 5 to 7 yrs will negate
need for PRB.

Thermal treatment

Vinyl Chloride in the river

Merritor wants copies
of all Factsheets and Outreach
communications.

5-21-18 Rockwell International
Technical Meeting
Dadina, James, Abena, Shelby
3 wells

remove PRB
• 5-7 yr timeframe

4. In main source area, not seeing hex chrome.
It will be treated if still there. Decline
greatly at the PRB. If its there it
gets treated.

5.

6. City refuse to sample the wells.
Is Meritor willing to plug and
abandon wells properly?

7. Alternative plan → Will have to think
about this / Never seen pump & treat
not work

8.

9. Meritor feels will improve gw
immediately in EH.

10. CERCLA quality clean-up.
Offered - Streamline RI & FS.
Restarting from scratch.
BCDA / Facility -

No evidence that ^{gw}contamination
from Rockwell into the community.

1994 / Year of Baseline Risk Assessment

Open to ideas to fund community
assistance.

EPA Concerns and Comments for the Meritor Verbal Proposed Interim Action for the Rockwell Wheel and Trim Proposed Superfund Site – Grenada, MS

Meritor's Verbal Proposed Interim Action:

- To install and operate a groundwater extraction and treatment system (3 pumping wells) designed to contain contaminated groundwater on the facility property. Initial well installed and operational within three months of agreement. System to be removed together with the permeable reactive barrier once treatment is complete, anticipated within 5-7 years of operation. Meritor is open to having this process include a Remedial Investigation/ Feasibility Study (RI/FS) for facility property but may not include the neighborhood or off-facility areas.

EPA Evaluation:

Limitations - The proposed work does not constitute a permanent, final remedy:

1. • The Meritor proposal is focused on groundwater containment and reduction of contaminants entering the creek, but does not include groundwater restoration or prevention of air contamination.
2. • The proposal does not restore groundwater to beneficial use and meet applicable standards. *drinking water*
3. • NAPL/source control is needed, but not included in Meritor's proposal. *Meritor not clear on question.*
4. • The proposed work does not address hexavalent chromium present in the groundwater and Meritor proposes to eventually remove the permeable reactive barrier. It is uncertain that the groundwater pump and treat will remove hexavalent chromium from the groundwater before it is pumped back into the ground or discharged to the outfall ditch. Prior to the installation of the permeable reactive barrier, the concentration of hexavalent chromium in the surface water of Riverdale Creek exceeded the state standard for protection of aquatic life. If the hexavalent chromium in the groundwater is not treated, it could cause the surface water standard to be exceeded.
5. • The proposed work is not an "NPL-equivalent" cleanup, as it is not designed to meet applicable cleanup standards.
6. • The proposal does not address contamination, if any, in the aquifer below the Shaley Aquitard.
7. • If the pump and treat system does not work as intended, the PRP has not proposed an alternative plan.
8. • Unclear that the groundwater contamination in the Eastern Heights neighborhood has been adequately characterized, and Meritor may be unwilling to perform RI/FS in neighborhood.
9. • Will not immediately improve the groundwater in the Eastern Heights neighborhood but relies on groundwater travel time.
10. • RI/FS is Needed. The following items are included in the typical remedial process and are NOT currently included in Meritor's proposal.
 - Site characterization: While existing data will be utilized, there are important data gaps, including permanent multi-level wells in the Eastern Heights neighborhood, extent and source of ambient air contamination, and identification and characterization of additional source areas at the facility;
 - Baseline human health risk assessment; and
 - Evaluation of potential remedies, proposed plan, public input and remedy selection.

- // • Technical assistance grants are available for the community at NPL sites. (Technical assistance grants for the community are not included in Meritor's proposal.)
- /2 • Meritor's 2018 Groundwater Report: The report is focused on liability issues and does not include an evaluation of possible clean up methods. EPA disagrees with some of the statements/conclusions, and cannot evaluate others. It is not appropriate for EPA to "agree" with the report. The data will be utilized in designing a remedy.

Meritor needs EPA to comment
on Meritor's 2018
3/26/18 → GW Report.

Expect verbal or conf call to
discuss technical conclusions.

Need approval of sources
plums, outside of plant,
moose lodge Rd neighborhood.
Want a call specific to the
GW Report

Where are we on the
listing?
We cannot discuss this in
detail w/o the rt people
@ the table.

6-7-18 Update on Grenada

Still needing answers
Not a RCRA approach

Interim Action ROD?
Toug waiting on Div. Guidance

CERCLA Action Cleanup
AOC-Site wide SAA - is not quick →
we have more liability.

* AOC - interim measures
Bring all PRPs to the table

* RIFS - site wide notice letters

Draft what want in the
meantime.

Work on timeline strategy needed

nt

to

105.

5

7.

e

- Schedule
 - side wide agreement
 - need workplan
 - looking for them to do something quickly
 - have a discussion w/ Meritor
 - timing
- Go forward w/ interim measures now
w/o conditions

Document everything / give timing
to receive documents

Ambient air results in next week

added surface soil sampling added
in June

Briefing on house by house
what we find.

Sub-slab - vs - ambient

concentration (need chat seat)
action 2 mg/l women

8.8 mg/l ^{men} ind for women

OSHA level --

Make distinction in OSHA level
ppb vs mg

highest concentration of gw
in neighborhood @ gw depth

concentrations under the plant
PRB? planning to pull waste back
to the (14,000,000)

letter

date

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

8:00

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

7-2-18 EH Cont call

Notes for Carcass July 8-14

Sampling Trip: 3rd sampling trip

32-40 bins heat-mat

70- pairs of shoe covers (one pair)

16 houses

8 houses per team

each team 4 houses with 4 house per

Tim Staged SESD

Derrick EPA

Carleen Brock SESD

Tom B&V

Tamie B&V

met ext 8th-14th

may come back early

will have equip to replace
or install parts.

parts installed in lot 6 homes

1st day locate & test

Day 1

8:00 - ~~Ambient Air stations~~ First

~~test ports~~

1 hr window

inventory

Survey

Remove chemicals

test port, if not working install

Sub-slab sampling info Suma's

There will be 4 B&V

Day 2

Set up & Suma canister

Ambient Air Stations set

up on day 2

Thursday: I will sample after air
sampling complete.

Day 3

Sub Slab sampling &
test port again before

Meet 7:00 am Monday @ Holiday
Inn

Jack Taylor will install
new port

SESD will bring balance & equipment
for testing ports & installing

grey plastic containers @
calmart.

Removal information:

- Stephen sends it to:
 - * Mr. Nunn → to Don Williams
 - * Heidi Friedman
- Davina sends to:
 - * City Mgr & other officials
 - * Congressman
 - * Senator
- Abena sends to:
 - * MDEQ
 - * Mail copies to Don Williams, workers @ the facility

Remedial information:

Stephen sends it to:

- David Nunn
- cc: Woodruff, Ajanaka, Mann, Marraccini, Johnston, Hansen
- Heidi Friedman
- cc: Joel Eagle, Woodruff, Abena, Mann, Davina, Shelby, Hansen
- Ted Lyon
- cc: Woodruff, Abena, Mann, Davina, Shelby, Marquette Wolf, Hansen

Davina sends to:

- Congressman
- Senator
- City & County Officials
- Supervisors

Abena: → Davina, Glen, Kevin Woodruff, McClough,
Koperc, Bing, Mann, Spurlin, Stephen,
* MDEQ ^{Shelby} ^{Hansen}

cc: Melissa C, L. Chambers, J. Crellin
P. Weathersby

CAGs organize community / you are already organized

Tech Asst / TASC

TAP - PRP consider doing this but in ^{its} RI/FS

Attorneys pulled out of the TAP Meetings

TAP - Tech Asst Plan (PRP funded)

- must include process for EPA
- provide tech advisor
- PRP agree / language for TAP
- Signing meeting

TANA process (Hdqtty fund this)

- Tech needs assessment

Skeo

- meet w/ all stakeholders
- needs
- explain what has been done

TASC - Tech advisor (can be a subcontractor)

- ~~pr~~ CP/RC / contract

Questions:

- Local cultural
- EJ
- understand
- hydro
- toxicological

- facilitator -

Hotel Lippert, 1000 P.M. 2-10-1
P.O. Box 1000

Dear Mr. Lippert
I am writing you to inform you
that I have received your letter of the 2nd inst.
and am sorry to hear that you are not
satisfied with the plan.

I am sorry to hear that you are not
satisfied with the plan.

I am sorry to hear that you are not
satisfied with the plan.

I am sorry to hear that you are not
satisfied with the plan.

I am sorry to hear that you are not
satisfied with the plan.

I am sorry to hear that you are not
satisfied with the plan.

VI Call 5/16/17

Preliminary data from 1st Round
of IA Sampling.

Rob is out of the Indy office.

Jay Cutler - Santa Claus, IN

Call Don Williams Re: the
transformer -

Lab problem w/ the radial
samples were prepared incorrectly
and reporting limits were too high.
Mid to upper 50's $\mu\text{g}/\text{m}^3$

Canister data -

| | | | | |
|-----------------------|-----|-----------|-------------------------------|-----------|
| Pass B4
13, 12, 28 | B-4 | 1st shift | 51.4 $\mu\text{g}/\text{m}^3$ | } 5/1-5/2 |
| | | 2nd shift | 33.6 $\mu\text{g}/\text{m}^3$ | |
| | | 3rd shift | 13.8 $\mu\text{g}/\text{m}^3$ | |

Pressure differential data.

Spiller on the micromanometer
due to pressure on the floor.

Source assessment work plan approval.

Data for work plan for ambient air
monitoring.

Equis Database to contain:

- ① All USEPA data, including the TAGA bus data, but we need to prioritize data entry to get the most useful data in first neighborhood
- ② All of our own data. Check to see what is missing & get to into USEPA Equis database and into our own.
- ③ Plaintiff's data set. Figure out what is not there, get it into electronic format and get it into our database. We don't have to agree that it is good data. We have to flag issues, inconsistencies, and lack of QA/QC + validation, but it should still be OK to get it in the database w/ caveats.
- ✓ ④ The plaintiff air data are complete and we have everything we need to get it into our database. It is just going to take a lot of work.

- ⑤ Data from our current investigation
- (a) Get it validated ASAP
 - (b) Get it into EQGIS format
 - (c) Upload to USEPA
 - (d) Upload to our database
 - (e) Data tables
 - (f) Graphics.

- ⑥ Update Tool on the work and associated costs on the database side. Also cost estimate for new data collection effort (No, K, M), and ambient air discussion.

- ✓ ⑦ Cost estimate + schedule for Triangle property sampling.
- (a) Call George Ross re: access.
 - (b) Follow-up with Louise re: availability.

- ⑧ Need survey data so we can draw maps.
- (a) AOC-A BNAPL Map.
 - (b) Updated surface of SCA
 - (c) PCA plume drawing
 - (d) Update overall plume maps

- ✓ ⑨ City marking of sewer - have to push to get location + depth.

- (10) Verify that the CR+6 data are in mg/L and then discuss w/ TA why the reporting limits are so high. Can we bring them down. Note the Arcadis neighborhood data set with similar concentrations of other metals. What method did they use for CR+6? Compare to ours.
- (11) Look at ways to plot the Caprolactam data for KIRK + the neighborhood. We have these in 3D and it might be nice to show this.
- (12) Review Caprolactam data for the E9 Basin and determine where else we may want to sample for this.
- (13) Figures for other SVOCs + VOCs in GWW from KIRK to the neighborhood.
- (14) Ask about CSIA for the EH vs 204 plume.

35° 26.435'
35° 26'

- (15) Can EPA force access to the Plaintiff's wells for our WL records? Short of that, can we place other wells for water level purposes?

* (16) Call Will Moody Re North Brunswick. 732-970-6686 ⁹⁰⁸⁻⁵⁸¹⁻⁶²⁹¹ ~~732-970~~

(17) Call George Ross. 801-977-6346 a
Real Estate. 801-971-4074 c

✓ (18) Meet w/ Daniel to go over North Brunswick.

✓ (19) Get the Heath data & produce the table.

Tuesday
(20) Get Mn, K, Na data from Stanton and plot it. Look at correlation between each of these metals and with chlorinated dioxins. Good science here. Compare to historic data set.

✓ (21) Send Trial data w/ final names & designations to Margaret. So she can finalize her table then work w/ Ragon & Margaret to get into Equi

(22) Look at PCA/Stoneyard data set in 3D if possible and compare TCE/DCE ratio across the board to see if the 204/203 area shows the highest ratio. Also, look at TW-310, TW-2325/D, + TW-2315/D.

(23) Get cost estimate for power drop for Grenada and to bring power ~~to~~ back to the PRB.

Q: Re NPL Proposal - Rockwell International

01/24/2018

10:30am

Niel McMillan } Senator Wicker's Office
~~at~~ CHOE Center

Danina Maccacini

Q: about site @ boundary
"encouraged talking to Tracy Baker"

R.F. when will it start?

"great path forward"

Will try to get someone to mtg, but
asked if we would share any relevant info
from mtg.